

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
In the Matter of the Application of
Nassau County Police Officer Anthony DiLeonardo,

Petitioner,

For Judgment in the Nature of Mandamus to Review
under Article 78 of the Civil Practice Law and Rules,

-against-

The Nassau County Police Department, the Nassau County
Commissioner of Police; Thomas J. Krumpter,

Respondents.
-----X

NOTICE OF
PETITION

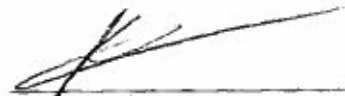
Index No.: 14-008686

PLEASE TAKE NOTICE, that upon the annexed verified petition, the undersigned will move this Court, on the 26th day of September, 2014, at a term of this Court to be held at the Courthouse located at 100 Supreme Court Drive, Mineola, New York 11501, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Article 78 of the Civil Practice Law and Rules:

- (1) vacating the May 5, 2014 determinations of the Nassau County Police Department and its Interim Commissioner terminating the employment of the Petitioner, Anthony DiLeonardo which, respectively, denied petitioner defense and indemnification pursuant to General Municipal Law §50-1, and then summarily adhered to that determination on appeal;
- (2) compelling the Nassau County Police Department and Commissioner Krumpter to reinstate Officer DiLeonardo to his prior employment and status with the department and ordering that he receive all retroactive the pay from the date of his termination until his reinstatement; and

- (3) Alternatively, remitting to the Commissioner to grant petitioner a *de novo* hearing on the issue of his termination at a proceeding for which there are known and published rules and procedures and at which only competent credible evidence is received.
- (4) And any other relief this Court deems appropriate and just.

Respectfully submitted,



Bruce A. Barket, Esq.
Barket, Marion, Epstein, & Kearon, LLP
Counsel for Petitioner

TO: Nassau County Police Department
Legal Affairs Bureau
1490 Franklin Avenue
Mineola, NY 11501

Commissioner Thomas J. Krumpert
Nassau County Police Department
Legal Affairs Bureau
1490 Franklin Avenue
Mineola, NY 11501

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of :
Nassau County Police Officer Anthony DiLeonardo, :

Petitioner, :

**VERIFIED
PETITION**

For a Judgment in the Nature of Mandamus to Review :
under Article 78 of the Civil Practice Law and Rules, :

-against- :

Index No.: 14-008686

The Nassau County Police Department, the Nassau County
Commissioner of Police; Thomas J. Krumpster, :

Respondent. . :
-----X

STATE OF NEW YORK)

COUNTY OF NASSAU)

ss.

RECEIVED
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NASSAU COUNTY
COUNTY CLERK'S OFFICE

Bruce A. Barket, an attorney admitted to practice law in the State of New York,
and a partner at Barket Marion Epstein & Kearon, LLP, counsel for petitioner Anthony
DiLeonardo, deposes and states the following upon information and belief:

PRELIMINARY STATEMENT

1. This petition seeks relief pursuant to Article 78 of the Civil Practice Law and
Rules, §7803(3), in the nature of mandamus to review.

2. Relief should be granted in this case because the determination of the Nassau
County Police Department terminating the employment of Office DiLeonardo was made was
arbitrary and capricious, and constituted an abuse of discretion.

3. This petition is timely made within four months of the Nassau County Office
DiLeonardo's termination on May 5, 2014.

4. At all times hereinafter mentioned, the Respondent, Thomas J. Krumpter was and still is the Nassau County Interim Commissioner of the Police Department, an agency organized under and pursuant to the General Municipal Law of the State of New York.

5. The Petitioner was a duly sworn and appointment member of the Nassau County Police Department having been sworn in as a Nassau County Police officer on November 2, 2007.

6. While the Petitioner was employed as a Police Officer he was a Civil Service Employee entitled to the rights and privileges of the Civil Service Law of the State of New York, particularly Section 75 of said Law.

7. On April 22, 2012, Officer Dileonardo was served with allegations that he violated 13 Rules and Regulations of the Department.

8. On March 10, 2014 "hearing" was held before a hearing officer handpicked by the Commissioner. The hearing continued on March 11th and March 19th. (the transcript of the proceeding is attached as exhibit "A") Only one witness, Detective Sergeant JoAnne Distler, was called, who was not present for any of the relevant events. Her testimony merely offered her interpretation of some of the witness statements and reports in an Internal Affairs report she helped prepare. There was not a shred of first hand evidence presented. All of the evidence came in the form of witness statements and reports. This was not a "hearing" by any rational standard. One person offered her opinion—an opinion, by the way, that she was not qualified to render--under oath about the paper work in the file.

9. There were no rules published by the department regarding how the purported hearing should be conducted. The presiding officer did rule on objections but there was not a

published or stated standard governing his rulings. Without a set of rules, the "hearing" was nothing more than a proceeding intended to mask a predetermined result.

10. In addition to the testimony, the respondent offered an expert opinion letter from a retired New York City Detective qualified to render opinions (attached as exhibit "B") about police shootings.

11. At the conclusion of the proceeding the department and the petitioner submitted memos summarizing their respective positions. (attached as exhibit "C" is the department's memo and exhibit "d" is the petitioner's memo)

12. In a written decision dated March 30, 2014 the hearing officer determined that officer Dileonardo had violated 3 rules and recommended that he be fired. (exhibit "E") What is shocking and revealing is March 30th, the date of the decision, predates the submission of the closing memos by each side. Clearly, the decision was not only predetermined, but apparently written before the petitioner even had a chance to draft and serve the closing arguments. The hearing officer simply inserted and rebutted a few arguments made in the closing memo into the decision firing officer DiLeonardo, which had already been written. The hearing was sham.

FACTS

13. The uncontroverted proof from the witness statements establishes that on the evening of February 26, 2011, into the early morning hours of February 27, 2011, off-duty police officers Anthony D. DiLeonardo and Edward Bienz, accompanied by DiLeonardo's girlfriend Sophia Cornia, and Bienz's wife Jillian Bienz, had gone out together for dinner and then to a couple of bars in Huntington, where they each consumed a few alcoholic and non-alcoholic drinks, and went dancing (*see* 3/17/2012 P.O. DiLeonardo Statement at ¶2-11; 3/13/2012 P.O. Bienz Statement at ¶2-3). At around 1:00 a.m., they left the last bar, and DiLeonardo and

Sophia, who were in Sophia's white Infinity and were unfamiliar with Huntington, followed the Bienes' blue Acura toward Jericho Turnpike (3/17/12 P.O. DiLeonardo Statement at ¶13-14; 3/13/12 P.O. Bienz Statement at ¶4; 2/27/11 J. Bienz Statement at pg. 1; 2/27/11 S. Cornia Statement at pg. 1).

14. At approximately 1:15 a.m., Bienz got lost and pulled over to the side of the road on Oakwood Drive, parking his vehicle near the curb. DiLeonardo pulled up behind him, and sat in the Infinity with Sophia, waiting for Bienz to continue driving (3/17/12 P.O. DiLeonardo Statement at ¶15-18; 3/13/12 P.O. Bienz Statement at ¶4-5; 2/27/11 J. Bienz Statement at pg. 1; 2/17/11 S. Cornia Statement at pg. 1).

15. As they were sitting in the car, a white Prius with a male driver and a female passenger pulled up alongside DiLeonardo's car, blocking one lane of traffic (3/17/12 P.O. DiLeonardo Statement at ¶19; 3/13/12 P.O. Bienz Statement at ¶5). The Prius was a taxi owned by Dobro Express, being driven by a new employee, Thomas Moroughan, with his girlfriend, Kristie Mondo in the passenger seat (2/27/11 Statement of K. Mondo at pg. 1; 2/27/11 Statement of T. Moroughan at pg. 1).³

³ Moroughan, a new driver at Dobro Express with less than a week on the job, had three prior arrests and two misdemeanor convictions, and was wanted in Tennessee for a federal fraud case. On the day of the incident, he was "having a bad day [as] there was a lot of traffic and [he] wasn't making any lights" (2/27/11 Statement of Moroughan at pg. 1). He got angry because he was driving behind the Bienes' blue Acura sometime before it stopped, and was flashing his high beams at it for driving erratically (2/27/11 Statement of Mondo at pg. 1; 2/27/11 Statement of Moroughan at pg. 2). Moroughan perceived that DiLeonardo's white Infinity, which was then behind him, had flashed its beams at him, so he began to drive slowly to "piss off" the driver of the Infinity, who passed him in spite of Moroughan's attempts to prevent this (2/27/11 Statement of Mondo at pg. 1). Moroughan then got stuck at a light as the cars turned the corner, but when the light turned green, he followed them and saw them stopped at the side of the road (2/27/11 Statement of Mondo at pg. 1; 2/27/11 Statement of Moroughan at pg. 2). Neither Bienz, DiLeonardo, Jillian, or Sophia was aware that the Prius had brighted anyone, and DiLeonardo denied brighting the Prius. It thus appears that Moroughan got angry because the Acura, which was lost, was driving erratically, and he perceived that the Infinity was being belligerent when, in fact, it was just passing him to keep up with the Acura. This explains why, in contrast to Moroughan and Mondo, no one in the Acura or Infinity even recalled any earlier incident with the Prius.

16. Believing that the driver of the Prius was going to ask him for directions, DiLeonardo, who was at the wheel of the Infinity, rolled down his window (3/17/12 P.O. DiLeonardo Statement at ¶19-21). Moroughan, yelled out of his car's open passenger window, "You need to learn how to fucking drive, I'm going to teach you how to fucking drive right now." (3/17/12 P.O. DiLeonardo Statement at ¶22; *see also* 2/27/11 K. Mondo Statement at pg. 2; 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo exchanged words with Moroughan, and as DiLeonardo began to close his window, Moroughan exited his car, walking around the front of the Prius toward DiLeonardo's car, while pointing at him with his right hand and yelling, "I'm going to kill you." (3/17/12 P.O. DiLeonardo Statement at ¶23-26; *see also* 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo could not see Moroughan's left hand, and, concerned that Moroughan might have a weapon, he exited his car, keeping the open door of the Infinity between himself and Moroughan (3/17/12 P.O. DiLeonardo Statement at ¶27). Moroughan continued to yell at DiLeonardo, saying, "I don't care about this fucking car. I'm going to smash your car and I'm going to kill you." (3/17/12 DiLeonardo Statement at ¶26). Moroughan then got back into his car, and floored it into reverse (*Id.*; 2/27/11 T. Moroughan Statement at pg. 2), as DiLeonardo, fearing for his and Sophia's safety, and believing that Moroughan was going to ram the Infinity in which Sophia was still sitting, drew his gun from his ankle holster and attempted to get around the back of the Infinity to get Sophia out of the car (P.O. DiLeonardo Statement at ¶28-30). As he walked towards the back of the car, he pulled out his shield, which was on a chain around his neck, and held it out in front of him with one hand, yelling to the Prius that he was a police officer and ordering the driver of the Prius to stop (2/27/11 J. Bienz Statement at pg. 1-2; 2/27/11 S. Cornia Statement at pg. 2).⁴

⁴ Jillian Bienz, who saw the Prius pull up next to DiLeonardo's car, and heard DiLeonardo and the driver of the Prius cursing and yelling at each other, "with the people in the taxi [] doing most of the yelling", also observed the

17. Before DiLeonardo could get fully around the back of his car, the Prius, which had backed up a few car lengths and had now stopped with its front facing the back of the Infinity at a diagonal angle, began accelerating toward the rear of the Infinity, where DiLeonardo was standing (DiLeonardo Statement at ¶30; 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo shouted, "Stop, police, don't move" and pointed his gun at the Prius, which was heading straight towards him. Moroughan did not stop or slow down, and DiLeonardo fired, emptying all five rounds of his weapon (P.O. DiLeonardo Statement at ¶30-34).⁵

18. The Prius then came to a stop between 10 and 25 feet away from DiLeonardo's car, and DiLeonardo approached the driver's side door with his shield out and his gun drawn, stating, "Police, don't move, you are under arrest." (3/17/12 P.O. DiLeonardo Statement at ¶38-39; 3/13/12 P.O. Bienz Statement at ¶9). Moroughan refused DiLeonardo's commands to unlock the door, so DiLeonardo smashed the driver's side window with the butt of his gun, unlocked the door, and pulled it open.⁶ As he attempted to remove Moroughan from the car, the latter resisted, cursing at DiLeonardo and threatening to kill him. A struggle ensued, during which Moroughan grabbed DiLeonardo's gun with one hand and punched him with the other, as DiLeonardo was leaning into the vehicle. Moroughan then shifted the car into reverse, and sped

Prius back up and then stop, and saw DiLeonardo holding up what she believed was his shield as he moved towards the back of his car, yelling that he was a police officer, and ordering the driver of the Prius to stop the car (2/27/11 J. Bienz Statement at pg. 1-2). Sophia Cornia, who was sitting in the Infinity, saw the taxi back up aggressively and stop behind her car. She also saw DiLeonardo move towards the back of the car while holding out his shield, which he was wearing on a chain around his neck (2/27/11 S. Cornia Statement at pg. 2).

⁵ In a signed statement given on the day of the incident, Moroughan told police that, "I felt [DiLeonardo] fired at me to protect himself because I drove at him." (2/27/11 T. Moroughan Statement at pg. 2-3). At the hearing the Detective Sergeant Dissler hinted that the confession was taken under suspicious circumstances. However, there is not any testimony in the record that would corroborate any claim that the confession was either involuntary, false or taken in violation of the Moroughan's rights.

⁶ According to Kristie Mondo, the passenger in the Prius, during the struggle DiLeonardo "said he was a cop and that [Moroughan] was going to jail." (2/27/11 Statement of K. Mondo at pg. 2). Moroughan also recalled that DiLeonardo "said he was a police officer and that [Moroughan] was under arrest," but Moroughan claimed that he was not sure DiLeonardo was a cop, so he drove away (2/27/11 Statement of T. Moroughan at pg. 3).

backwards, dragging the Officer alongside the vehicle. DiLeonardo twisted away from the car, and ran away from the Prius towards Bienz, who was running to assist him, but both Officers were hit by the driver's side door of the Prius, which was still open, and were thrown to the ground (3/17/12 P.O. DiLeonardo Statement at ¶48-51; 3/13/12 P.O. Bienz Statement at 9; 2/27/11 T. Moroughan Statement at pg. 3). The Prius made a U-turn and sped away (2/27/11 J. Bienz Statement at pg. 3; 2/27/11 S. Cornia Statement at 2). DiLeonardo's gun had fallen into the Prius during the struggle.

19. DiLeonardo immediately called 911, identified himself as a police officer, and reported that the driver of a white Prius with gold plates had tried to run him over, that DiLeonardo had shot at the Prius, and that the driver of the Prius had taken his gun (3/17/12 P.O. DiLeonardo Statement at ¶56). EMS arrived within minutes, transporting DiLeonardo, Bienz, Sophia, and Jillian to Huntington Hospital (Id. at ¶57).

20. Meanwhile, Moroughan realized he had been shot and also drove to Huntington hospital, while his girlfriend-passenger, Kristie Mondo, called 911 (2/27/11 Statement of K. Mondo at pg. 3; 2/27/11 Statement of T. Moroughan at pg. 3).

CAUSES OF ACTION UNDER C.P.L.R. ARTICLE 78

21. The Department's determination made by Commissioner Krumpeter, Terminating Officer DiLeonardo was arbitrary and capricious and constituted an abuse of discretion.¹⁹ It cannot be permitted to stand.

¹⁹ Although, for the sake of clarity and organization, petitioner's claims are divided into sections identifying separate causes of action based on each cognizable claim under CPLR 7803(3), there is quite a bit of overlap among the sections. Indeed, an error of law or a violation of lawful procedure will also generally render an agency's determination arbitrary and capricious. And, of course, all of these errors will lead to a conclusion that the agency abused its discretion. To avoid repetition, claims are not repeated in multiple sections; however, the classification of a claim as an error or law or a violation of lawful procedure should not be deemed a waiver of any argument that such claim also resulted in an arbitrary determination or an abuse of discretion; to the contrary, all of the causes of action, taken cumulatively, overwhelmingly support this conclusion.

FIRST CAUSE OF ACTION:

THE DEPARTMENT'S DETERMINATION WAS ARBITRARY AND CAPRICIOUS

A. The Standard governing the hearing was so vague that the Department's decision is Facially Arbitrary and Capricious

Under well-established case law, "Protection . . . against the exercise of arbitrary administrative power demands both procedural safeguards within the agency and outside checks upon the exercise of untrammelled administrative discretion." *Nicholas v. Kahn*, 47 N.Y.2d 24 (1979). Thus, "a legislative enactment may rely on agency expertise," but such delegation is permissible "only if the legislature limits the field in which the agency's discretion is to operate and provides standards to govern its exercise." 164th *Bronx Parking, LLC v. City of New York*, 862 N.Y.S.2d 248, 257 (N.Y. Sup. Ct. 2008). So, too, the administrative agency must "articulate objective standards against which an ultimate determination could be measured." *Timber Point Homes, Inc v. County of Suffolk*, 155 A.D.2d 671 (2d Dept. 1989).

Here there was not any standard employed at all, except "substantial evidence" as used by the hearing officer in his decision but that phrase was not defined and it was not clear how or to whom it was applied. It was not announced at the beginning of hearing. If the hearing officer's intent was to sustain the charges based merely on "substantial evidence" then that choice was made by him alone without any guidance from the Department, union contract or legislative enactment. The hearing officer simply created a standard on his own. The standard may, or may not, be appropriate for a court to review a determination made by an agency, but it cannot be used as the sole basis to terminate an officer's employment.

B. There were no rules at all governing how the "hearing" should be conducted.

The presiding inspector in a manner devoid of any rationale rooted in law or logic seemed to be accepting or not "evidence" based on nothing but mere whim, and, of course, that whim nearly always permitted the department to do whatever it wanted to do. The hearing officer frequently admitted evidence after saying that he would give the evidence the weight it is due. It would be difficult to imagine anything more arbitrary. The hearing officer revealed that the proceeding was not a fair hearing with rules applicable to both sides. Instead, it was proceeding wherein he would take anything the Department offered and would use it as he saw fit, without even bothering to tell the petitioner which evidence was entitled to weight and which would be disregarded completely.

THE DEPARTMENTS'S DECISION CONSTITUTED AN ABUSE OF DISCRETION AND WAS CONTRARY TO THE FACTS


For all the reasons stated on the record and in the closing Memo and as outlined above the decision by the Commissioner and the Department was contrary to the facts that could be fairly found from an examination of the record. Firing Officer DiLeonardo was an abuse of discretion because Officer DiLeonardo was not offered a fair hearing.

PRAYER FOR RELIEF

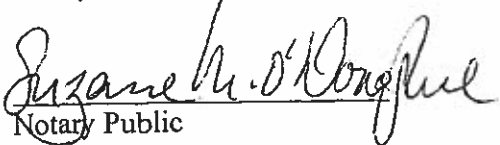
WHEREFORE, and for the reasons set forth above, petitioner's request for a judgment in the nature of a writ of mandamus-to-review pursuant to Article 78 of the Civil Practice Law and Rules vacating the decision by the department terminating the employment of Officer DiLeonardo should be granted; this Court should order the Department to reinstate

DiLeonardo to his position as a police officer and grant him back pay. Alternatively, this Court should remit the matter to the Police Department for a new hearing and determination.

Dated: Garden City, New York
August 13, 2013


Bruce Barket
Barket, Marion, Epstein & Kearon, LLP
Counsel for Petitioner
(516) 745-1500

Sworn to before me this
5th day of September, 2014


Notary Public

SUZANNE M. O'DONOGHUE
NOTARY PUBLIC, State of New York
No. 0100628940
Qualified in Suffolk County
Commission Expires Sept. 30, 2017

SUZANNE M. O'DONOGHUE
NOTARY PUBLIC, State of New York
No. 0100628940
Qualified in Suffolk County
Commission Expires Sept. 30, 2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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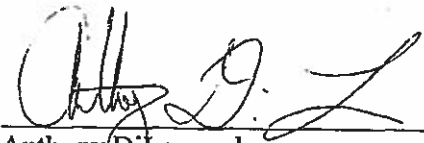
STATE OF NEW YORK)
 :ss.:
COUNTY OF NASSAU)

VERIFICATION

Index # _____

ANTHONY DILEONARDO, the petitioner in this proceeding, being duly
sworn, states:

I have read the annexed **Verified Petition** and know the contents thereof and the
same are true to my knowledge, except those matters that constitute legal argument or are alleged
on information and belief, and as to those matters I believe them to be true.


Anthony DiLeonardo

Sworn to before me this
5th day of September 2014


Notary Public

LENSKA ROBRIGÜEZ
NOTARY PUBLIC, State of New York
No. 01R06147482
Qualified in Suffolk County
Commission Expires June 5, 2018

EXHIBIT A

DISTLER

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POLICE DEPARTMENT COUNTY OF
NASSAU, NEW YORK,

CASE NO. 8118

AGAINST

ANTHONY DILEONARDO
POLICE OFFICER, SERIAL NO. 9013

-----X

NASSAU COUNTY POLICE DEPARTMENT
1490 FRANKLIN AVENUE
MINEOLA, NEW YORK 11501
MARCH 10, 2014
10:15 a.m.

BEFORE: INSPECTOR MICHAEL STUDDERT
HEARING OFFICER

COPY

DISTLER

A P P E A R A N C E S:

HEARING OFFICER: INSPECTOR MICHAEL STUDDERT

NASSAU COUNTY POLICE DEPARTMENT

ATTORNEYS FOR CLAIMANT

1490 FRANKLIN AVENUE

MINEOLA, NEW YORK 11501

BY: LESLI P. HILLER, ESQ.

FILE # 8118

BARKET, MARION, EPSTEIN & KEARON, LLP

ATTORNEYS FOR RESPONDENT

666 OLD COUNTRY ROAD

SUITE 700

GARDEN CITY, NEW YORK 11530

BY: BRUCE A. BARKET, ESQ.

ALSO PRESENT:

Israel Santiago, Sergeant Commanding Officer Legal Bureau

Tara Comiskey, Detective Sergeant Legal Bureau

Karen Taggart, ESQ., Legal Bureau

William Purcell, Third Precinct PBA Trustee

Joanne DeLorenzo, Legal Bureau

DISTLER

1 HEARING OFFICER STUDDERT: Good
2 morning. I am Inspector Michael Studdert.
3 This hearing is now in session. I have
4 been designated a hearing officer as set
5 forth by Commissioner's Departmental
6 Personnel Order 12-080 dated July 23,
7 2012. This hearing is an administrative
8 departmental disciplinary hearing held
9 pursuant to New York State Civil Service
10 Law, Article 75.

11 It is my understanding that Police
12 Officer DiLeonardo has been served with
13 the charges and specifications under Case
14 8188, alleging 13 counts of violations of
15 the rules and regulations of the NCPD.

16 It is also my understanding that the
17 Department is only presenting counts 3, 4,
18 and 11, and therefore this hearing is
19 limited in scope to evidence concerning
20 only those three charges.

21 I remind both parties that this is an
22 administrative hearing and is not a
23 criminal trial nor a civil trial in the
24 normal course of the meaning. As such,
25 cross-examination of testifying parties

DISTLER

1 will be allowed to the extent I think it
2 is necessary. I will hear testimony that
3 is relevant and allow documentary evidence
4 into the record. All questions concerning
5 this proceeding, testimony, objections,
6 and any statements made by the attorneys
7 should be addressed to me. If it is
8 necessary, I will obtain a clarification
9 for the record. I also remind both
10 parties that hearsay evidence is
11 admissible.

12 May I have the appearance for counsel
13 for the record? Counsel for the
14 respondent?

15 MR. BARKET: It is Bruce Barket,
16 B-A-R-K-E-T. Barket, Marion, Epstein &
17 Kearon is the name of the law firm. Our
18 office is at 666 Old Country Road in
19 Garden City.

20 Good morning, Inspector. Sorry.

21 HEARING OFFICER STUDDERT: Good
22 morning.

23 May I have the appearance for the
24 Department's representative?

25 MS. HILLER: Yes. Lesli Hiller,

DISTLER

1 L-E-S-L-I, Nassau County Police Department
2 Legal Bureau.

3 And just for the record, I think the
4 case number that was entered into the
5 record was not right. I have Case 8118,
6 not eight — I thought I heard 881.

7 HEARING OFFICER STUDDERT: I have
8 8188.

9 MS. HILLER: I have 8118. 8118.

10 HEARING OFFICER STUDDERT: Okay.

11 Are there any observers here who are
12 going to take part in the hearing?

13 MS. TAGGART: Karen Taggart, Nassau
14 County Police Department's Legal Bureau.
15 I am here for observation purposes.

16 HEARING OFFICER STUDDERT: State your
17 name for the record.

18 MR. PURCELL: Yes. William Purcell,
19 P-U-R-C-E-L-L.

20 MS. DELORENZO: Joanne DeLorenzo.

21 MS. COMISKEY: Tara Comiskey.

22 MR. SANTIAGO: Detective Sergeant
23 Israel Santiago, Commanding Officer of the
24 Legal Bureau.

25 HEARING OFFICER STUDDERT: Okay.

DISTLER

1 May I have brief opening statements?

2 MS. HILLER: I just have a couple of
3 preliminary issues that I wanted to
4 address before we went into openings. The
5 first thing is, I have already passed up
6 to the hearing officer a copy of discovery
7 that was exchanged prior to this hearing
8 via email on November 15, 2012. I have
9 another copy if you need one, counsel —

10 MR. BARKET: Sure.

11 MS. HILLER: — but it was exchanged
12 to your office. I am going to read into
13 the record what it is, and then I'll give
14 it to you, because this is my copy.

15 MR. BARKET: Okay.

16 MS. HILLER: Within that package were
17 copies of the Police Department County of
18 Nassau Forms 209.

19 Also within that package is a copy of
20 the actual charges and specifications,
21 PDCN Form 210.

22 | Also included in that package were |
23 | statements of Police Officer Anthony |
24 | DiLeonardo, one of them being to the |
25 | Suffolk County Police Department; another

DISTLER

one, which is titled PDCN 206A, which is a Nassau County form.

Also included as far as statements is a statement made by Police Officer Anthony DiLeonardo to the Nassau County Police Department Internal Affairs Unit, dated March 17, 2012. There are copies of portions, I should say, that were exchanged of Police Officer Anthony DiLeonardo's hospital record from Huntington Hospital.

There is a copy of the County of Suffolk Shooting Incident Reconstruction Report, nine pages.

There are two pages of a hospital report with respect to Thomas Moroughan, M-O-R-O-U-G-H-A-N.

And there are multiple statements also in that package. Three-page statement from Thomas Moroughan. A three-page statement from Jillian Bienz, B-I-E-N-Z. A three-page statement from Kristie, K-R-I-S-T-I-E, Mondo, M-O-N-D-O. A three-page statement from Sophia Cornia, C-O-R-N-I-A.

DISTIER

1 A three-page statement from Eric
2 Klug, K-L-U-G. A one-page statement from
3 Timothy -- Johen, I believe it is,
4 J-O-H-N -- J-O-H-E-N. Sorry.

5 A one-page statement from Ruthie
6 B-E-S-A-R-E-S, and a four-page statement
7 from Dennis D-O-B-R-O-C-H-A-S-R-E.

8 Let the record reflect that I've
9 handed another copy to counsel and a
10 copy -- the hearing officer also has a
11 copy.

12 In addition to that, prior to this
13 hearing counsel and I discussed possibly
14 stipulating to certain facts and possibly
15 stipulating to one document. And I'm not
16 certain that we've reached any agreements
17 on that or not yet, and so I just wanted
18 to ask counsel on the record if we did
19 agree to any of them.

20 MR. BARKET: I have a couple of
21 questions, if I can.

22 HEARING OFFICER STUDDERT: To?

23 MR. BARKET: To -- I guess, to the
24 hearing officer, to you, Inspector. This
25 is being conducted, you said, governed by

DISTLER

1 Department Rules Article 9? Do I have
2 that correct?

3 HEARING OFFICER STUDDERT: The rules,
4 yes.

5 MR. BARKET: Okay. And what's
6 happening to the other counts, if I can
7 call them that, or the other charges and
8 specifications they're not pursuing?

9 MS. HILLER: Well, at this point I'm
10 presenting today counts 3, 4, and 11, and
11 the others we are holding in abeyance at
12 this point, depending on what happens with
13 respect to this -- this particular
14 hearing.

15 MR. BARKET: I'm going to, I guess,
16 object to that process. I don't think
17 it's appropriate for the Department to
18 take what will amount to be multiple
19 shots -- forgive the use of that phrase
20 here -- at my client. They have charged
21 him with 13 specific violations, and
22 assuming that he is exonerated on the
23 three they presented, I hear that it is
24 their intent to proceed on three more and
25 then three more and so forth. I don't

DISTLER

1 think that's a fair process. Maybe they
2 can go forward on all 13 now or the ones
3 they choose, and then the other ones
4 should be dismissed.

5 MS. BILLER: At this point I'm not
6 moving to dismiss the additional charges.
7 I don't — I don't believe that there is a
8 double jeopardy issue with respect to
9 presenting three of the 13 at this point.
10 My position would be that we are moving
11 forward with the three.

12 With respect to the departmental
13 procedure — like I'll give you a
14 for-instance -- sometimes officers, they
15 retire or they are terminated with charges
16 open, and they merely get filed. They
17 remain pending. I believe the status is
18 they remain pending at that point.

19 MR. SANTIAGO: Yes. For
20 clarification, the reason we cite Civil
21 Service Law 75 is to make it clear that
22 this is a state-mandated hearing. It's
23 important for the record to reflect that.

24 Additionally, we are planning to go
25 forward with the three charges you

DISTLER

1 indicated. If -- and I doubt this will
2 happen, but if she -- if the policeman
3 does go forward with other charges, of
4 course we would have to re notice those
5 charges so you could adequately prepare.
6 But it has been determined, and it's
7 within our administrative prerogative to
8 go forward for our purpose, to go with
9 these three.

10 This is not cloaked with the -- all
11 the -- like I said, this is not a trial as
12 one would -- or a proceeding as one would
13 find in a judicial proceeding. So, what
14 this is in an administrative proceeding,
15 we determine -- it is upon the
16 Commissioner and the hearing officer that
17 this the charge we'll go forward with
18 presenting at this hearing.

19 But she is correct. Those charges
20 and specifications are routinely filed and
21 are addressed at different stages of this
22 hearing process.

23 MR. BARKET: I don't -- I can't speak
24 to what's done or the example you gave,
25 but there is a fundamental due process

DISTLER

1 concern that we have, and whether double
2 jeopardy applies in the criminal sense or
3 not, certainly overall due process
4 applies. And taking multiple -- using
5 multiple hearings to try and prove the
6 same transaction of events would violate
7 any sense of fairness or due process that
8 would exist. You go forward with what the
9 charges you think you can prove, and if
10 you don't prove those, that ends it. You
11 don't get to come back again and again and
12 again. Otherwise --

13 HEARING OFFICER STUDDERT: The
14 record's going to reflect your concern.

15 MR. BARKET: Thirteen --

16 HEARING OFFICER STUDDERT: Did you
17 have any other concerns? You said you had
18 a couple of questions.

19 MS. HILLER: Can I just address just
20 that one thing?

21 MR. BARKET: Otherwise, we'd have
22 13 -- potentially 13 separate hearings
23 concerning the same transaction.

24 MS. HILLER: I think your argument --

25 MR. BARKET: That cannot be -- that

DISTLER

1 cannot be an appropriate process.

2 MS. HILLER: I think that argument is
3 for another day, like if that actually
4 happened, and I don't think it's ripe at
5 this point. That would be my position,
6 for the record.

7 MR. BARKET: Well, the other part of
8 this, assuming that he's exonerated of the
9 three, it would leave pending these three
10 charges, which would still prevent him
11 from, if he chose to resign, or it would
12 have an effect on his continued
13 employment.

14 At some point the charges that you've
15 brought against him have to be adjudicated
16 in some way or another. You can't just
17 leave them hanging forever, nor can you
18 take multiple shots at him, take multiple
19 attempts to sustain the same set of
20 allegations. Just it violates any sense
21 of due process that would exist.

22 HEARING OFFICER STUDDERT: Okay. The
23 record's going to reflect your concerns.
24 Was there anything else you had? You said
25 you had a couple of questions?

DISTLER

1 MR. BARKET: Just in terms of timing,
2 my understanding is that the Department is
3 going to proceed with one witness today.
4 We -- I looked at the rule -- I gave a
5 list of the witnesses awhile ago to the
6 Department, that we wanted to call, and
7 they gave us back a number of subpoenas.
8 I looked at the rules, and it seems as
9 though the Department is actually
10 responsible for producing the witnesses,
11 unless I've misread that.

12 I'm looking at Section 6 of Rule 6,
13 Item 3. It says: "The department
14 attorney will arrange to give notice of
15 the hearing to the witnesses whose
16 presence is requested at the hearing by
17 either the Department or the member."

18 Several of the witnesses are from
19 Suffolk County. We've had a conversation
20 with an attorney for the Suffolk County
21 Attorney's Office, Brian Mitchell, who is
22 representing the Suffolk officers for
23 this. And for whatever reason, they're
24 not available today. And I note that at
25 least one Nassau police officer or -- I'm

DISTLER

1 not sure of his rank.

2 MS. HILLER: Sergeant.

3 MR. BARKET: Oh. Flanagan?

4 MS. HILLER: Inspector.

5 MR. BARKET: Inspector Flanagan.

6 Sorry. Is not going to be available until
7 next Monday. So I know we want to proceed
8 day to day, but that might not be
9 possible, given this, but we'll see how we
10 do today, I guess.

11 HEARING OFFICER STUDDERT: Okay.

12 MS. HILLER: Just with respect to the
13 concern with -- on the notice, which
14 section did you cite to, Bruce, on -- on
15 Article 9?

16 MR. BARKET: I'm looking at Rule 6
17 and then Item 3.

18 MS. HILLER: Notice to the members to
19 appear as complainants or witnesses at the
20 hearing may be given by telephone instead
21 of subpoena. And we have notified every
22 member that's in our control, pursuant to
23 Article -- Rule 3A of Article 9. And for
24 our non-members, they will be given
25 administrative subpoenas, which will be

DISTLER

1 issued by the trial commissioner. The
2 trial commissioner has signed all the
3 subpoenas for all the witnesses that were
4 requested, and it's my understanding that
5 they were returned back to you for
6 service.

7 MR. BARKET: They -- they were, and
8 we actually went about serving them, but
9 that was before I read this rule. It
10 looks like -- I mean, hopefully, they'll
11 show up, but it looks like you're supposed
12 to be -- the Department will arrange and
13 give notice to the witnesses, and it
14 spells out how to do that.

15 MS. HILLER: We have.

16 MR. BARKET: For department members
17 you can simply call them on the phone. If
18 they're non-department members, you have
19 to issue a subpoena.

20 MS. HILLER: And my belief is we did
21 that pursuant to the rule.

22 MR. BARKET: All right. Let's see
23 what happens; if they show up.

24 MS. HILLER: As far as counsel's
25 concern for Flanagan, I -- I would ask for

DISTLER

1 an explanation as to what your need for
2 him is, because I think we can negate that
3 if we can stip to the opinion or result of
4 the Deadly Force Response Team Report.
5 Because I believe that's his only
6 involvement.

7 MR. BARKET: I'm not prepared to do
8 that at this time. We'll see what happens
9 at the end of the Department's case.

10 MS. HILLER: Okay.

11 HEARING OFFICER STUDDERT: Okay. Do
12 you want to call your first witness?

13 MS. HILLER: Sure. Let me just make
14 sure that I don't have anything else I
15 wanted to read into the record.

16 Do you want the charges read in as
17 part of the opening?

18 HEARING OFFICER STUDDERT: Yes, the
19 ones you're going forward with.

20 MS. HILLER: Do you want me to open?

21 HEARING OFFICER STUDDERT: Yes.

22 MS. HILLER: Okay. My name is Lesli
23 Hiller. I'm an attorney for the Nassau
24 County Police Department Legal Bureau.
25 The charges that we'll be presenting today

DISTLER

1 are as follows:

2 Under Case Number 8118, charges and
3 specifications, Count 3, which reads as
4 follows: "On February 27, 2011, at about
5 0115 hours, at Oakwood Road and Tippen
6 Drive, Huntington, New York, engaged while
7 off duty in unlawful conduct, in that
8 Police Officer DiLeonardo, without
9 justification, struck Thomas Moroughan in
10 the face with his .38-caliber Smith &
11 Wesson revolver. The blow broke Mr.
12 Moroughan's nose, caused him substantial
13 pain, and required medical treatment at a
14 hospital.

15 "At the time of the incident,
16 Mr. Moroughan was seated in the driver's
17 seat of a stopped Toyota Prius" --
18 P-R-I-U-S -- "New York State Registration
19 Number 13100TY.

20 "Pursuant to New York State Penal Law
21 Section 120.05, Subdivision 2, Police
22 Officer DiLeonardo's actions constitute
23 the crime of assault in the second degree,
24 which is a Class D felony. This is a
25 violation of Article 5, Rule 2,

DISTLER

Subdivision 1."

Count 4: "On February 27, 2001, at approximately 0115 hours, at Oakwood Road and Tippen Drive, Huntington, New York, engaged while off duty in unlawful conduct, in that Police Officer DiLeonardo intentionally caused damage in excess of \$1,500 to a 2010 Toyota Prius, New York State Registration Number 13100TY, being operated by Thomas Moroughan.

"Police Officer DiLeonardo fired his .38-caliber Smith & Wesson revolver five times at the motor vehicle. Three of the shots entered the passenger compartment. Once the Toyota stopped moving, Police Officer DiLeonardo then broke the driver's side window with his revolver.

"Pursuant to New York State Penal Law Section 145.10, Police Officer DiLeonardo's actions constitute the crime of criminal mischief in the second degree, which is a Class D felony. This is a violation of Article 5, Rule 2, Subdivision 1."

Count or Charge Number 11: "On

DISTLER

1 February 27, 2011, at or about 0115 hours,
2 at Oakwood Road and Tippen Drive,
3 Huntington, New York, not properly
4 safeguard his uniforms and equipment and
5 any other department property issued for
6 or assigned for his use, in that Police
7 Officer DiLeonardo, after using" -- I'm
8 sorry -- after, A, use -- I'm reading it
9 from the charges. I apologize for the
10 grammar -- "his .38-caliber Smith & Wesson
11 revolver in physical confrontation with
12 Thomas Moroughan, the driver of a 2010
13 Toyota Prius, dropped said revolver inside
14 Mr. Moroughan's vehicle.

15 "This is a violation of Article 8,
16 Rule 12, Subdivision 2."

17 For the record, the charges and
18 specifications previously read into the
19 record were served on Police Officer
20 DiLeonardo on August 22, 2012. Officer
21 DiLeonardo answered the charges through
22 his attorney via letter dated August 28,
23 2012, by answering not guilty.

24 You will hear from Sergeant Jo-Ann
25 Distler, who will tell you that she is

DISTLER

1 assigned to the Internal Affairs Unit and
2 that she was assigned to investigate the
3 incident that is the subject of this
4 departmental hearing.

5 As a result of the Internal Affairs
6 Unit investigation, Police Officer Anthony
7 DiLeonardo was served with the
8 aforementioned charges and specifications
9 alleging violations of the department
10 rules and regs.

11 At this point we're not stipulating
12 to any facts; correct?

13 MR. BARKET: No.

14 MS. HILLER: You will hear testimony
15 that on February 27, 2011, Police Officer
16 Anthony DiLeonardo was in fact a member of
17 the Nassau County Police Department. The
18 evidence that we will present will be more
19 than what a reasonable mind might find
20 supports the position that Police Officer
21 Anthony DiLeonardo was, in fact, in
22 violation of two counts of Article 5, Rule
23 2, Subdivision 1 of the departmental rules
24 and regs and of one count of Article 8,
25 Rule 12, Subdivision 2.

DISTLER

1 You will hear from Sergeant Distler
2 that on February 27, 2011, at
3 approximately 1:15 in morning, Police
4 Officer Anthony DiLeonardo was in his car
5 pulled over at Oakwood Road and Tippen
6 Drive in Huntington, New York, Suffolk
7 County.

8 You will hear that several other
9 people were present at that location at
10 that time, including multiple civilians.
11 The Department will show that DiLeonardo
12 was off duty and had a Smith & Wesson
13 .38-caliber revolver that was assigned to
14 him, and that he was involved in an
15 incident involving civilians in the early
16 morning hours of that date, February 27,
17 2011.

18 You will hear from Sergeant Distler
19 that an incident took place involving
20 Police Officer DiLeonardo wherein he
21 was -- wherein he fired -- I'm sorry --
22 that weapon into a taxicab that was driven
23 by Thomas Moroughan.

24 You will hear from Sergeant Distler
25 that Police Officer DiLeonardo approached

DISTLER

1 the car in a state of rage. He broke the
2 driver's side window with the .38 Smith &
3 Wesson revolver that was assigned to him.

4 You will hear that Police Officer
5 DiLeonardo hit Mr. Moroughan in the face
6 with the .38 Smith & Wesson, all with the
7 intent to cause physical injury to Mr.
8 Moroughan, and that he did, in fact, cause
9 physical injury to Mr. Moroughan,
10 including but not limited to breaking his
11 nose.

12 Sergeant Distler will explain for the
13 record how this was not in the course of a
14 lawful arrest, but instead how P.O.
15 DiLeonardo was acting outside the scope of
16 his duties as a police officer.

17 The Department will show through
18 Sergeant Distler that by intentionally
19 firing five shots, three of which hit
20 Moroughan's car, or taxi, three of which
21 broke the windshield, and -- excuse me --
22 that P.O. DiLeonardo broke the driver's
23 side window of the taxicab that Mr.
24 Moroughan was driving, he caused damage in
25 excess of \$1,500 to that vehicle,

DISTLER

1 constituting what would be considered
2 criminal mischief in the second degree, a
3 violation of the New York State Penal Law
4 and Article 5, Rule 2, Subdivision 1 of
5 the departmental rules and regs.

6 Furthermore, his actions also
7 constituted assault in the second degree,
8 a violation of the New York State Penal
9 Law and Article 5, Rule 2, Subdivision 1
10 of the rules and regs.

11 The Department will also show that
12 Police Officer DiLeonardo violated Article
13 8, Rule 12, Subdivision 2 by failing to
14 properly safeguard his authorized weapon,
15 a .38-caliber Smith & Wesson revolver, by
16 proving that the weapon was recovered in
17 Mr. Moroughan's taxi, on the floor in the
18 back behind the driver's seat.

19 You will hear that the weapon ended
20 up there as a result of P.O. DiLeonardo
21 smashing the window with the .38, conduct
22 not prescribed under the rules and regs
23 when effectuating a lawful arrest.

24 At the end of the Department's direct
25 case there will be no question as to

DISTLER

1 whether or not the hearing officer has
2 substantial evidence before him that P.O.
3 DiLeonardo's conduct constituted the
4 crimes of criminal mischief in the second
5 degree, assault in the second degree, both
6 felonies under the penal law and both
7 violations of the department rules,
8 Article 5, Rule 2, Subdivision 1; and also
9 that P.O. DiLeonardo failed to properly
10 safeguard his Smith & Wesson revolver that
11 was assigned to him, a violation of
12 departmental rule, Article 8, Rule 12,
13 Subdivision 2.

14 Therefore, at the end of our case we
15 will be asking that the hearing officer
16 find P.O. DiLeonardo in violation of the
17 departmental rules that are before this
18 tribunal.

19 Thank you.

20 HEARING OFFICER STUDDERT: Okay.
21 Before you give your opening, just let the
22 record reflect that Officer DiLeonardo is
23 present with his attorney and with his
24 union representative.

25 Go ahead, Mr. Barket.

DISTLER

1 MR. BARKET: Good morning. This
2 incident was started by Mr. Moroughan, who
3 pulled up next to Officer DiLeonardo's
4 car. Moroughan got out of his car, was
5 shouting obscenities at Police Officer
6 DiLeonardo and conducting himself in a way
7 where a reasonable individual would be
8 concerned that Moroughan was going to
9 injure Officer DiLeonardo or -- and or a
10 civilian companion of Officer DiLeonardo.
11 Further, a reasonable person could
12 conclude that Moroughan had a weapon on
13 him when he got out of the car.

14 Officer DiLeonardo acted in a manner
15 that was reasonable and prudent. He got
16 out of his car, confronted Moroughan,
17 asked him questions, told him to calm
18 down. Moroughan got into his car, backed
19 up, and then began to accelerate towards
20 Officer DiLeonardo and towards his car
21 where another occupant was located.

22 Officer DiLeonardo fired shots in
23 order to protect himself and protect his
24 companion. DiLeonardo -- excuse me --
25 Moroughan refused repeated requests to

DISTLER

1 stop his car, to get out of his car, to
2 submit to a lawful arrest. Officer
3 DiLeonardo displayed his shield, announced
4 himself as a police officer, was pointing
5 a weapon at Moroughan.

6 After the shots were fired, Moroughan
7 locked the cars — locked the doors to his
8 car. Officers DiLeonardo broke the window
9 in an attempt to pull Moroughan out of the
10 car and to stop the car from traveling.

11 Ultimately, Moroughan ran over both
12 Officer DiLeonardo and, I believe, Officer
13 Bienz, who was present, and the gun that
14 Officer DiLeonardo had ended up in the
15 back of the car pursuant to the struggle
16 that took place between the two
17 individuals.

18 This account that I gave was reviewed
19 and sustained by a number of Nassau County
20 police officers and Suffolk police
21 officers who interviewed the witnesses at
22 the time or shortly thereafter of the
23 incident. There is really no way for
24 this, hearing officer -- Inspector, for
25 you to determine which of these two

DISTLER

1 accounts is correct without hearing from
2 the witnesses themselves.

3 While hearsay is permissible, what
4 will end up happening at this particular
5 hearing is the Department will put on a
6 witness who wasn't present, who will tell
7 you what witnesses said to her, and then
8 she'll tell you what her conclusion was
9 from those witnesses.

10 We will put on witnesses who also --
11 some of whom were present, and will tell
12 you what their opinion was about what
13 happened. Without hearing from the
14 witnesses themselves as to what took
15 place, all the hearing -- all the
16 inspector would be doing -- the hearing
17 officer would be doing to sustain the
18 charges is selecting one set of hearsay
19 statements over another, or more to the
20 point, one opinion of a witness who was
21 not present over the opinion of another
22 witness who was not present.

23 That kind of determination, if found
24 against Officer DiLeonardo, would be
25 arbitrary, would be -- would violate any

DISTLER

1 sense of due process. It will literally
2 be impossible for you, Inspector, to
3 conclude that Officer DiLeonardo violated
4 any rules unless you were to hear from the
5 individuals present and make your own
6 credibility determinations.

7 It's not a case where you're simply
8 going to have hearsy from one side. We
9 have to recognize that police officers,
10 high-ranking police officers, inspectors,
11 chiefs responded to the hospital where
12 both DiLeonardo and Moroughan were taken.
13 They interviewed individuals. Moroughan
14 confessed to his criminal conduct that
15 night. And these Nassau police officers,
16 some of whom are high ranking, who are
17 charged with making a determination at
18 that point as to the propriety of the
19 shooting incident, sustained Officer
20 DiLeonardo's account, concluded that he
21 was fit for duty, that he had violated no
22 rules and certainly had committed no
23 crimes.

24 There is no reason to credit the
25 opinion of an Internal Affairs officer

DISTLER

1 over that of the inspectors and or chiefs
2 who responded to the scene that night.

3 There's also no reason and there will be
4 no reason to credit the Internal Affairs
5 officer's account -- or opinion, I should
6 say, over the police officers, detectives,
7 who interviewed the witnesses, from
8 Suffolk County Police Department.

9 It is simply her view, and to allow
10 her opinion to be sustained without
11 hearing from any of the witnesses would in
12 essence pass the responsibilities the
13 hearing officer has to the Internal
14 Affairs officer, and that would be wholly
15 inappropriate. She's clearly made her
16 determination. It's impossible for the
17 hearing officer to make a determination
18 without hearing from somebody other than
19 an individual who has already formed an
20 opinion, an opinion that, by the way, is
21 not shared by a number of high-ranking
22 very experienced police officers from both
23 Nassau County and Suffolk County.

24 What you will also hear, I believe,
25 is that there was an assistant district

DISTLER

1 attorney, a low-ranking assistant attorney
2 from Nassau County, Risco Lewis, who was
3 present at the time in the hospital. She
4 is a close friend, the godmother, I
5 believe, of Moroughan, who later became a
6 deputy chief in the Suffolk County Police
7 Department, and her presence was wholly
8 inappropriate, was the source of, I think,
9 much of the poor and inaccurate
10 information that has come forward. She's
11 given an account that is inconsistent with
12 police officers who — from Suffolk and
13 from Nassau. It seems to be based on
14 nothing other than bias. She referred the
15 individual to his lawyer — Moroughan.
16 And she continued to push this in a way
17 that was inappropriate.

18 I think at the end of this hearing a
19 fair and reasonable conclusion will be
20 that the Department cannot sustain their
21 charges, particularly in the manner in
22 which they intend to proceed. But even if
23 they were to call witnesses, I think that
24 a fair and objective view of this from the
25 witnesses who were present would be that

DISTLER

1 Officer DiLeonardo acted reasonably,
2 prudent, and in a manner consistent with
3 his duties as a police officer and
4 consistent with the rules and regulations.

5 This is an unfortunate incident that,
6 frankly, has been driven by inaccurate
7 press reports, leaked information. As we
8 all know, the Internal Affairs report here
9 was leaked to Newsday, I think fair to
10 say, by the Moroughan's civil attorney.
11 And the press in this case has been in
12 some ways remarkably unfair to Officer
13 DiLeonardo. And I'm hopeful that we will
14 have a fair review of the real evidence at
15 this hearing and that we just not simply
16 accept the word and the opinion of one
17 Internal Affairs officer.

18 HEARING OFFICER STUDDERT: Call your
19 first witness.

20 MS. HILLER: Before I call my first
21 witness, I'm going to ask for a brief
22 recess.

23 HEARING OFFICER STUDDERT: Okay.
24 Take ten minutes. Is that enough time?

25 MS. HILLER: Yes.

DISTLER

(Thereupon, a brief recess was taken.)

HEARING OFFICER STUDDERT: We're back on the record. Let the record reflect that Ms. Hiller has called her first witness.

MS. HILLER: Police Department calls Detective Sergeant Jo-Ann Distler.

HEARING OFFICER STUDDERT: Please state your rank, name, shield number, and command.

THE WITNESS: Detective Sergeant Jo-Ann Distler, Internal Affairs Unit, Shield No. 164.

HEARING OFFICER STUDDERT: And your serial number?

THE WITNESS: 6384.

JO - ANN DISTLER, the witness, herein, after having been first duly sworn by Danielle Stieglitz, a Certified, Professional Court Reporter and Notary Public in and for the State of New York was examined and testified as follows:

EXAMINATION BY MS. HILLER:

Q Sergeant, you just testified that you are part of the Internal Affairs Unit.

DISTLER

1 A Yes.

2 Q How long have you been assigned to the

3 Internal Affairs Unit?

4 A Three and a half years.

5 Q As part of that assignment do you do

6 investigations?

7 A Yes.

8 Q Generally what do those investigations

9 entail?

10 A The investigations entail somebody making

11 an allegation or a complaint. It could be either

12 anonymously or directly to a supervisor or it could

13 be an investigation that can be directed by the

14 Commission of Police.

15 The investigations entail alligations

16 of misconduct of -- or violation of the rules and

17 regulations or criminal conduct by members of the

18 police department.

19 Q Did there come a time that you were

20 assigned to investigate an incident regarding Police

21 Officer Anthony DiLeonardo?

22 A Yes.

23 Q When was that?

24 A June 7, 2011.

25 Q Did you generate some type of report as a

DISTLER

1 result of that investigation?

2 A Yes.

3 Q Did you reach conclusions as a result of
4 that investigation?

5 A Yes.

6 Q Was there another report generated by the
7 Nassau County Police Department prior to your
8 investigation that also addressed this incident?

9 A Yes.

10 Q What was that report?

11 A It was a Deadly Force Incident Report --
12 Deadly Force Response Team Incident Report.

13 MS. HILLER: For procedural purposes
14 do you want me to pass up items that I am
15 moving into evidence to you first?

16 HEARING OFFICER STUDDERT: Yes.

17 MS. HILLER: At this time, let the
18 record reflect that I am passing up a copy
19 of the Deadly Force Response Team
20 Investigation Shooting Incident to the
21 Hearing officer Studdert.

22 At this time I would also like to
23 move this document into evidence. I am
24 passing a copy up to my witness and I am
25 also passing a copy over to counsel. I

DISTLER

1 would like this document to be marked as
2 Department Exhibit 1 (handing).

3 HEARING OFFICER STUDDERT: Please
4 mark this.

5 (Deadly Force Response Team Report
6 was marked as Department's Exhibit 1 for
7 evidence, as of this date.)

8 Q Sergeant Distler, do you recognize the
9 document that has been marked as Department 1?

10 A Yes.

11 Q What do you recognize that to be?

12 A It's a copy of the Deadly Force Response
13 Team Investigation Preliminary Report.

14 Q Did you review that document prior to your
15 conclusions that you reached in your IAU report?

16 A Yes.

17 Q Does it appear to be that same report?

18 A Yes.

19 Q I ask you to read that document in its
20 entirety into the record.

21 A The date was February 27, 2011. To:
22 Commissioner of Police through official channels.
23 From: Deputy Chief John P. Hunter, Deputy Chief of
24 patrol. Subject: Deadly Force Response Team
25 Investigation Shooting Incident, Oakwood Road,

DISTLER

Huntington Station, New York preliminary report.

"On Sunday, February 27, 2011 the deadly force response team consisting of the below listed members investigated a shooting incident which took place at approximately 0115 hours on Oakwood Road, approximately 50 feet south of Tippen Drive, Huntington Station, New York.

"Deputy Chief John P. Hunter, Deputy Chief of Patrol, Inspector Edmund Horace, Commanding officer ITU, Captain Daniel P. Flanagan, Commanding Officer Police Academy, Detective Sergeant John DeMartinis, Homicide Squad."

"Paragraph 2. The incident involved the following police officers: P.O. Anthony DiLeonardo, Serial number 9013, Shield number 3632, Third Precinct. P.O. Edward Bienz, Serial number 8943, Shield number 3466, Third Precinct.

"Paragraph 3. The investigation consisted of an on-scene evaluation and a review of the investigation by the Suffolk County Police Department's Homicide Squad and Second Squad. All preliminary information was received from Suffolk County Police Department investigators. Interviews with police officers DiLeonardo and Bienz have not yet been conducted. As a result of this preliminary

DISTLER

1 investigation it is the opinion of the Deadly Force
2 Response Team that the actions of all officers
3 involved with regard to use of force issues are
4 within the departmental guidelines pertaining to the
5 use of deadly physical force, as well as those of
6 Article 35 of the Penal Law of New York State. All
7 officers involved are found fit for duty.

8 "Paragraph 4. The details of the
9 incident are as follows: At approximately 0115
10 hours officers DiLeonardo and Bienz were off duty
11 and in plain clothes separately operating their
12 privately owned vehicles after dinning in the
13 Huntington Station, New York area. Also present
14 with the officers in the vehicles were Officer
15 DiLeonardo's girlfriend and Officer Bienz's wife.
16 Both officers DiLeonardo and Bienz, while attempting
17 to leave the area became lost in the residential
18 area of Huntington Station. While attempting to
19 find their way out of the area the operator of a
20 white Toyota Prius taxi cab, later identified as
21 Thomas Moroughan, date of birth 7/23/84 and his
22 female passenger became involved in a traffic
23 incident with both of the officers. At one point
24 Moroughan was flashing his headlights from behind
25 Officer DiLeonardo's vehicle and Officer Bienz was

DISTLER

1 flashing his headlights from behind the taxi cab.

2 "Paragraph 5. The police officers
3 eventually separated themselves from Moroughan and
4 were still navigating through the streets of
5 Huntington Station and made a right turn, northbound
6 onto Oakwood Road. Both of the officers pulled
7 their vehicles over to the right-hand shoulder of
8 Oakwood Road, approximately 50 feet south of Tippen
9 Drive in order to ascertain how to get out of the
10 residential area. Moroughan, now traveling
11 westbound on West 19th Street arrived at the
12 intersection of West 19th Street and Oakwood Road.
13 Moroughan observed the officers pulled over on
14 Oakwood Road and decided to confront them. Made a
15 right turn onto Oakwood Road. Moroughan pulled up
16 adjacent to the officers' vehicles and began to
17 shout at the officers. Officer DiLeonardo exited
18 his vehicle, identified himself as a police officer,
19 and had a verbal exchange with Moroughan. Officer
20 Bienz also exited his vehicle and Moroughan then
21 decided to put his vehicle in reverse and back up
22 his vehicle.

23 "Paragraph 6. Once Moroughan backed
24 up a short distance, he stopped his vehicle, reeved
25 the engine, put the vehicle in drive and began to

DISTLER

1 drive his vehicle directly at Officer DiLeonardo.
2 Officer DiLeonardo, fearing for his life fired at
3 least three rounds from his off-duty .38 caliber
4 revolver at Moroughan, striking him through the
5 windshield. Subject Moroughan suffered wounds to
6 both his chest and arm. The subject vehicle now
7 came to a stop and Officer DiLeonardo approached the
8 subject vehicle from the driver side and Officer
9 Bienz approached from the passenger side. Officer
10 DiLeonardo broke the driver side window with his .38
11 caliber revolver in an attempt to terminate
12 Moroughan's actions and to arrest him. During this
13 time Officer DiLeonardo's revolver fell into the
14 subject vehicle. Moroughan once again put the
15 vehicle in reverse and backed up the subject
16 vehicle. This time striking and dragging Officer
17 Bienz. Moroughan then drove off and fled the scene.

18 "Paragraph 7. Subject Moroughan
19 eventually drove his vehicle to Huntington Hospital
20 for treatment. Officers DiLeonardo and Bienz were
21 removed to Huntington Hospital and treated for their
22 injuries and released. None of the injuries are
23 life threatening.

24 "Paragraph 8. The Suffolk County
25 Police Department Homicide Squad and Second Squad

DISTLER

1 are conducting the police investigation. Moroughan
2 was treated for his injuries and transported to
3 Suffolk County Police Department Second Squad, where
4 preliminarily he will be charged in connection with
5 assault on a police officer and reckless driving.
6 Signed by John P. Hunter Deputy Chief."

7 BY MS. HILLER:

8 Q Thank you.

9 After your investigation for IEU, did
10 you reach any conclusions?

11 A Yes.

12 Q What conclusions did you reach?

13 MR. BARKET: Objection. I would like
14 to be heard, please.

15 HEARING OFFICER STUDDERT: Okay.

16 MR. BARKET: Outside of the presence
17 of the witness.

18 HEARING OFFICER STUDDERT: Okay.

19 Please wait outside.

20 (Whereupon, the witness left the
21 room.)

22 MR. BARKET: Thank you. I understand
23 that hearsay is going to be permitted, but
24 it's one thing to ask the witness what she
25 learned factually. It is inappropriate

DISTLER

1 and irrelevant as to what the witness
2 thinks -- what her conclusions are, what
3 her opinions are. That is solely the
4 determination for the hearing officer to
5 make. Whether or not Detective Sergeant
6 Distler has a view that the charges should
7 be sustained or shouldn't be sustained,
8 that Officer DiLeonardo did something
9 wrong or didn't do something wrong, it's
10 irrelevant. We are not here to hear
11 witness's opinions. We are here to hear
12 facts. Some through hearsy and some
13 through hopefully personal knowledge. The
14 hearing officer will ultimately make the
15 determination in judgment so any opinion
16 evidence should be excluded.

17 HEARING OFFICER STUDDERT: Okay.

18 I am going to allow Sergeant Distler
19 to continue her testimony. Your concerns
20 are on the record.

21 MR. BARKET: Note my exception.

22 (Whereupon, the witness returned.)

23 BY MS. HILLER:

24 Q Sergeant Distler, after your investigation
25 did you reach any conclusions?

DISTLER

1 A Yes.

2 Q What were those conclusions?

3 MR. BARKET: Objection. Same
4 objection.

5 HEARING OFFICER STUDDERT: Overruled.
6 The record is noted.

7 A That Officer DiLeonardo be charged with
8 violation of certain rules and regulations.

9 Q In what form did that information get to
10 the Commissioner's office?

11 A In a form PDCN 209.

12 Q Is that a conclusion or a recommendation?

13 A It's a conclusion.

14 Q Okay.

15 So at the end of your investigation
16 you did reach certain conclusions and you did make a
17 recommendation?

18 A Yes.

19 Q What was that?

20 A That he be charged with certain violations
21 in the rules and regulations.

22 Q Sergeant, can you explain why your
23 results, the results and conclusions that you came
24 to are different from those that were the results of
25 the Deadly Force Response Team?

DISTLER

1 MR. BARKET: Objection. This really
2 is nothing more than having the witness
3 say, "Here is what I think." We are here
4 to determine some facts, not her opinion.
5 It is completely irrelevant.

6 HEARING OFFICER STUDDERT: Okay. I
7 am going to overrule. I will give it the
8 weight it's due. Continue. You can
9 answer the question.

10 A Can you repeat that?

11 Q Sure. Can you explain why the results of
12 your investigation are different from the results
13 and opinion that were generated from the Deadly
14 Force Response Team.

15 A Yes. At the time that the preliminary
16 report was done by the Deadly Force Response Team
17 all the facts were not available to the team. They
18 prepared that report the same date that the shooting
19 incident occurred. The Crime Scene Reconstruction
20 Report by the Suffolk County Police Department was
21 not complete. Interviews of the subjects were not
22 done and interviews of many witnesses were not done.

23 Q As a result of this incident was anybody
24 arrested?

25 A Yes.

DISTLER

1 Q Who was arrested?

2 A Thomas Moroughan.

3 Q Do you personally know the results of his
4 arrest at this point?

5 A Yes.

6 MR. BARKET: Objection. It's
7 completely irrelevant to what Officer
8 DiLeonardo did or did not do or with
9 respect to his conduct.

10 HEARING OFFICER STUDDERT: Overruled.

11 A He was arrested for assault second degree
12 and reckless endangerment, and on June 6, 2011 the
13 Suffolk County District Attorney's Office dismissed
14 all the charges.

15 Q Going back to the results of your
16 investigation at the Internal Affairs: One of the
17 charges that's before us today is the charge of
18 violation Article 5, Rule 2, Subdivision 1, unlawful
19 conduct.

20 A Yes.

21 Q Can you please explain what actions
22 constituted that unlawful conduct -- or what actions
23 you determined as a result of your investigation --
24 unlawful conduct.

25 A Yes. I determined that Officer DiLeonardo

DISTLER

1 -- his actions constituted what could have been
2 charged as a criminal mischief under the New York
3 State Penal Law.

4 Q What was the basis of your conclusion with
5 respect to the criminal mischief?

6 A A review of the Suffolk County Shooting
7 Reconstruction Report, the photographs provided to
8 me from the Suffolk County District Attorney's
9 Office of the crime scene, statements of Mr. Thomas
10 Moroughan, Ms. Kristie Mondo, Police Officer
11 DiLeonardo, Police Officer Bienz, and Eric Klug.

12 Q Describe what you learned about the damage
13 to the windshield of the car.

14 A The windshield had three bullet holes in
15 it.

16 MS. HILLER: I would like to pass up
17 to the hearing officer to be marked into
18 evidence two copies of photographs to
19 identify them at the top of the
20 photographs one of them has number 870 on
21 it and the other one has number 846, and
22 let the record reflect I am handing a copy
23 over to counsel as well (handing).

24 MR. BARKET: So which is going to be
25 marked 2 and 3?

DISTLER

1 MS. HILLER: Let's separate them into
2 Department 2 and 3, please.

3 (Copy of Photograph #870 was marked
4 as Department's Exhibit 2 for evidence, as
5 of this date.)

6 (Copy of Photograph #846 was marked
7 as Department's Exhibit 3 for evidence, as
8 of this date.)

9 MS. HILLER: Inspector, I have two
10 other photos. I can enter them now just
11 to save time. They are with respect to
12 damage of the car.

13 HEARING OFFICER STUDDERT: Okay.

14 MS. HILLER: I'll just address them a
15 little bit later. They will be 4 and 5.

16 HEARING OFFICER STUDDERT: Please
17 mark them.

18 (Copy of Photograph #966 was marked
19 as Department's Exhibit 4 for evidence, as
20 of this date.)

21 (Copy of Photograph #964 was marked
22 as Department's Exhibit 5 for evidence, as
23 of this date.)

24 MS. HILLER: At that time I would ask
25 that you pass the copy to the witness.

DISTLER

1 Thank you, Inspector.

2 HEARING OFFICER STUDDERT: All four?

3 MS. HILLER: Yes. That's fine.

4 BY MS. HILLER:

5 Q Detective Sergeant, do you recognize the
6 items that have been marked as Department 2, 3, 4,
7 and 5?

8 A Yes.

9 Q What do you recognize those items to be?

10 A They are copies of photographs, which were
11 provided to me by the Suffolk County District
12 Attorney's Office.

13 Q Have you seen them before?

14 A Yes.

15 Q Did you see those photos before you
16 reached your conclusion?

17 A Yes.

18 Q Did you use them as part of your
19 investigation?

20 A Yes, I did.

21 Q What do those photos depict?

22 A Exhibit 2 and 3 depict three bullet holes
23 into the windshield of the Toyota Prius taxi.
24 Exhibit 4 and 5 exhibit damage which was done to the
25 driver's side window.

DISTLER

1 Q Where did you get the photos from by the
2 way, when you were doing your investigation?

3 A Special Investigator Anthony Palumbo from
4 the Suffolk County District Attorney's Office.

5 Q In addition to those photos what else did
6 you review with respect to this charge of Article 5,
7 Rule 2, Subdivision 1?

8 A Statements -- numerous statements that I
9 referred to earlier.

10 Q In addition to the statements was there
11 anything else that you reviewed with respect to your
12 opinion?

13 A The Crime Scene Reconstruction Incident
14 Report.

15 MS. HILLER: At this time please let
16 the record reflect that I am passing a
17 copy of the County of Suffolk Shooting
18 Incident Reconstructive Report to the
19 hearing officer. This document has
20 already been exchanged during discovery
21 via email to counsel in November of 2012.
22 I'll provide you with another copy as
23 well. I would ask that it be marked as
24 Department 6, please (handing).

25 HEARING OFFICER STUDDERT: Please

DISTLER

1 mark this.

2 (Shooting Incident Reconstructive
3 Report was marked as Department's Exhibit
4 6 for evidence, as of this date.)

5 HEARING OFFICER STUDDERT: Let the
6 record reflect that Exhibit 6 has been
7 marked into evidence.

8 MS. HILLER: Thank you. I would ask
9 that you please pass that over to the
10 witness.

11 BY MS. HILLER:

12 Q Detective Sergeant Distler, is that the
13 report that you reviewed with respect to your
14 investigation?

15 A Yes, it is.

16 Q With respect to the items that are
17 depicted in Department Exhibit's 2 and 3, which
18 would be the windshield of the car; correct?

19 A Yes.

20 Q With respect to those items can you please
21 read from the report what additional information
22 that you used as a basis for your investigation with
23 respect to that particular damage?

24 A Yes. On page -- sheet number three of six
25 on the report I referred to the conclusion that was

DISTLER

1 stated in the report, "The examination of Dobro
2 Express Taxi 2010, Toyota Prius Hybrid with New York
3 reg. 13100TY revealed the presence of damage
4 consisting of three bullet impacts. See attached
5 diagram."

6 Q When you had this report as part of your
7 investigation, where did you get it from?

8 A Special Investigator Palumbo.

9 Q What was your understanding as to how this
10 report was generated?

11 A It was generated by the Suffolk County
12 Police Department's Forensic Science Crime
13 Laboratory, which they reconstructed the shooting
14 and with all the evidence and faxes that they
15 gathered, they generated the report.

16 Q With respect to Department 5 and 6, can
17 you please let the record reflect what those
18 documents are again.

19 A 4 and 5?

20 Q Yes.

21 A They are photographs of damage to the
22 driver's side door.

23 Q With respect to --

24 A Window.

25 Q Got you.

DISTLER

1 With respect to that damage, what
2 else in the Suffolk County report did you base your
3 ultimate conclusion on?

4 MR. BARKET: Which conclusion?

5 MS. HILLER: With respect to count
6 number 4, unlawful conduct. DiLeonardo's
7 actions constitute the crime of criminal
8 mischief in the second degree.

9 A On sheet number five of the Suffolk County
10 report, I refer to the final paragraph where it
11 stated that, "DiLeonardo approaches the driver's
12 door then shatters the driver's window with the
13 revolver."

14 Q In addition to the photographs that were
15 provided to you and your review of the Suffolk
16 County Shooting Incident Report, were there other
17 items or documents that you reviewed before you
18 reached your conclusion?

19 A Yes.

20 Q What was that?

21 A Statements.

22 Q What statement were those?

23 A Statements of Officer DiLeonardo,
24 statements of Police Officer Bienz, statements of
25 Thomas Moroughan, statements of Kristie Mondo, and a

DISTLER

1 statement from Mr. Eric Klug.

2 MS. HILLER: At this time I would
3 like the record to reflect that I am
4 passing up multiple statements to the
5 hearing officer. I am also providing
6 copies to counsel. I believe every single
7 statement is provided in this packet, but
8 for the last two, counsel has received as
9 part of prior discovery.

10 For the record I am passing up to the
11 hearing officer to be marked into evidence
12 a statement by Police Officer Anthony
13 DiLeonardo to the Internal Affairs Unit
14 dated March 17 of 2012.

15 I am passing up a copy of the PDCN
16 form 206. A statement of Anthony
17 DiLeonardo.

18 I am passing up a three-page
19 statement made by Jillian Bienz.
20 B-I-E-N-Z.

21 I am passing up a three-page
22 statement made by Thomas Moroughan.

23 A three-page statement by Kristie
24 Mondo. A three-page statement by Eric
25 Klug. A three-page statement dated

DISTLER

1 March 13, 2012 by P.O. Bienz, and portions
2 of a 50-H, specifically of Thomas
3 Moroughan. One from Suffolk County and
4 one from Nassau County (handing).

5 HEARING OFFICER STUDDERT: Mark these
6 into evidence.

7 (Anthony DiLeonardo's Statement was
8 marked as Department's Exhibit 7 for
9 evidence, as of this date.)

10 (PDCN Form 206 was marked as
11 Department's Exhibit 8 for evidence, as of
12 this date.)

13 (Jillian Bienz's Statement was marked
14 as Department's Exhibit 9 for evidence, as
15 of this date.)

16 (Thomas Moroughan's Statement was
17 marked as Department's Exhibit 10 for
18 evidence, as of this date.)

19 (Kristie Mondo's Statement was marked
20 as Department's Exhibit 11 for evidence,
21 as of this date.)

22 (Eric Klug's Statement was marked as
23 Department's Exhibit 12 for evidence, as
24 of this date.)

25 (Edward Bienz's Statement was marked

DISTLER

1 as Department's Exhibit 13 for evidence,
2 as of this date.)

3 (Suffolk County 50-H Hearing of
4 Moroughan was marked as Department's
5 Exhibit 14 for evidence, as of this date.)

6 (Nassau County 50-H Hearing of
7 Moroughan was marked as Department's
8 Exhibit 15 for evidence, as of this date.)

9 MS. HILLER: At this time I would
10 like the record to reflect that I have had
11 statements passed up to the hearing
12 officer marked as number 7 through 15. I
13 would like them to be moved into evidence
14 and I would like them to be moved over to
15 Sergeant Distler.

16 HEARING OFFICER STUDDERT: Let the
17 record reflect that they are accepted into
18 evidence.

19 BY MS. HILLER:

20 Q Sergeant Distler, the statements that you
21 have in your hand -- did you review them prior to
22 you concluding that Police Officer Dileonardo
23 violated Article 5, Rule 2, Subdivision 1 with
24 respect to the actions constituting criminal
25 mischief?

DISTLER

1 A Yes, I did.

2 Q For the economy of time with respect to
3 the hearing and everybody present, those items in
4 your hand marked 7 through 15, did you also review
5 those items with respect to count three before you
6 came to your conclusion that -- and recommendation
7 that P.O. DiLeonardo violated another section of
8 Article 5, Rule 2, Subdivision 1. That being
9 conduct that would constitute assault in the
10 second degree?

11 A Yes, I did.

12 Q For the record, at this time I would ask
13 you to read each of those statements in their
14 entirety into the record.

15 A , The first statement is dated March 17,
16 2012. It is addressed to the Commanding Officer of
17 the Internal Affairs Unit. From Police Officer
18 Anthony DiLeonardo, Serial number 9103, Shield
19 number 3632, Third Precinct, subject is IAU-27-2010.

20 "Paragraph 1. I am making this
21 statement for administrative purposes only. I have
22 not done so voluntarily but in compliance with an
23 order of a superior officer. This statement in no
24 way constitutes any waiver of my rights and this
25 statement or any part thereof may not be used

DISTLER

1 against me in any subsequent criminal proceeding.

2 "Paragraph 2. Officer Bienz — Eddie
3 and I made plans to go out during the early part of
4 the week of February 27, 2011.

5 "Paragraph 3. The evening of
6 February 26, 2011 my girlfriend Sophia Cornia and
7 myself met Eddie and his wife Jillian at a German
8 restaurant in Farmingdale, which I now know to be
9 Black Forest Brew Haus.

10 "Paragraph 4. We arrived at the
11 restaurant at approximately 8:00 p.m.

12 "Paragraph 5. We ate dinner and I
13 had two drinks as did everyone else. I drank
14 Jameson and pineapple juice. I am not sure what the
15 others had to drink but I do know that everyone was
16 drinking alcoholic beverages.

17 "Paragraph 6. We were at the
18 restaurant for approximately one and one half hours
19 and then we left to go to Huntington to have some
20 drinks.

21 "Paragraph 7. I drove my girlfriend
22 Sophia's car, which is a white 2011 Infiniti and I
23 followed Eddie, who was driving a blue Acura.

24 "Paragraph 8. We arrived in
25 Huntington and parked in a municipal parking lot.

DISTLER

1 "Paragraph 9. We went to several
2 different bars while in Huntington. I am not sure
3 at this time which bar we went to first. I know
4 that we went to Blue Hanu and that we went to The
5 Artful Dodger and one other bar. I don't recall the
6 name of the other bar.

7 "Paragraph 10. I remember that I
8 ordered two drinks at The Artful Dodger. I do not
9 recall if I finished the last drink. I had one
10 drink at Blue Hanu and one drink at the other bar.
11 I also consumed water as well. The other
12 individuals also ordered the same amount of
13 alcoholic beverages as I did.

14 "Paragraph 11. I recall that we were
15 at Blue Hanu for approximately 30 to 40 minutes and
16 I also recall that we were at The Artful Dodger for
17 one and one half to two hours, and that we were
18 dancing. I also recall that we were dancing in the
19 other bar which name I cannot recall.

20 "Paragraph 12. We walked from bar to
21 bar leaving our vehicles parked in the parking lot.

22 "Paragraph 13. When we left the last
23 bar we returned to our vehicles.

24 "Paragraph 14. I did not know my way
25 around Huntington so I followed Eddie who was going

DISTLER

1 to lead me to Jericho Turnpike.

2 "Paragraph 15. We traveled down a
3 main road and then at some point Eddie turned off
4 the main road and onto a side street. At that point
5 I knew he was lost because I believed we were
6 supposed to be taking a main road until we got to
7 Jericho Turnpike.

8 "Paragraph 16. Eddie pulled off the
9 side of the road, parked his vehicle adjacent to the
10 curb and I pulled behind him. I assumed he was
11 trying to figure out where he was. I now know that
12 this road is Oakwood Drive.

13 "Paragraph 17. At no time did I
14 notice anyone flashing high beams at me and I did
15 not flash my high beams at any vehicle. I do not
16 believe that I cut anyone off, nor did I notice
17 anyone cutting off Eddie or myself. There was no
18 type of road rage incident between myself and any
19 other vehicle.

20 "Paragraph 18. I sat in the car with
21 Sophia and we were waiting for Eddie to continue
22 driving.

23 "Paragraph 19. While I was located
24 at the side of the road, still seated in my vehicle
25 a white Prius taxi pulled up next to my car and this

DISTLER

1 vehicle was blocking one lane of traffic.

2 "Paragraph 20. Oakwood Drive is a
3 two-lane road with a double yellow line separating
4 the lanes.

5 "Paragraph 21. Within a minute from
6 the time I stopped my vehicle the Prius pulled up
7 next to me. Its passenger side window was directly
8 next to my driver's side window. I rolled down my
9 window because I thought that he was going to ask me
10 for directions. There was a female passenger in the
11 Prius and I never spoke to her and she never spoke
12 to me and she did not pose a threat to me.

13 "Paragraph 22. The driver yelled out
14 the open passenger window from where he was seated
15 in his vehicle, 'You need to learn how to fucking
16 drive. I am going to teach you how to fucking drive
17 right now.'

18 "Paragraph 23. I didn't say anything
19 to him to escalate the confrontation. I looked at
20 him having no idea what he was talking about and why
21 he was talking to me, and I said words to the affect
22 of why are you doing this? I cannot recall the
23 exact words which I used. I could have exchanged
24 more words with him but I do not recall at this time
25 if I did or not.

DISTLER

1 "Paragraph 24. He continued to yell
2 at me and I began to close my window and attempt to
3 ignore him in an attempt to avoid a confrontation.

4 "Paragraph 25. He then exited his
5 vehicle, walked to the front of his car, and
6 continued towards my window while yelling at me,
7 pointing at me with his right hand. He came to a
8 stop at the midline of his vehicle. I could not see
9 his left hand and I believed that he may have had a
10 weapon in his hand since he was keeping it down and
11 out of sight.

12 "Paragraph 26. He continued to yell,
13 'I'm going to kill you. I don't care about this
14 fucking car. I am going to smash your car and I'm
15 going to kill you.'

16 "Paragraph 27. I then exited my
17 vehicle as he was approaching it because I did not
18 think that I could defend myself or my girlfriend
19 from a seated position in the vehicle. I kept my
20 door between us. He then began to go back into his
21 car.

22 "Paragraph 28. This man was
23 completely out of control and irrational at this
24 point stating that he was going to kill me. He
25 immediately entered his vehicle and floored it into

DISTLER

1 reverse, backing up approximately four or five car
2 lengths to the best of my recollection.

3 "Paragraph 29. At this time I
4 believed that he was preparing to run his vehicle
5 into me and my vehicle.

6 "Paragraph 30. Fearing for mine and
7 Sophia's safety I removed my off-duty weapon from my
8 ankle holster and attempted to get around the back
9 of my vehicle to get Sophia out of the car. I did
10 not make it to the other side of the vehicle because
11 the vehicle started accelerating in my direction.
12 The front of the vehicle was pointed at me and the
13 vehicle was at a diagonal angle with the rear of the
14 vehicle slightly over the yellow line.

15 "Paragraph 31. At this point I
16 feared that he was going to strike me and my vehicle
17 where Sophia was still seated. I turned toward the
18 car and shouted, 'Stop. Police. Don't move,' and
19 pointed my weapon at his vehicle, which was headed
20 straight for me.

21 "Paragraph 32. He did not stop his
22 vehicle and he did not slow down. He continued to
23 drive his car toward me and my vehicle.

24 "Paragraph 33. As this crazed and
25 enraged man was driving toward me I feared for my

DISTLER

1 life and fired my weapon at the driver in an attempt
2 to stop the vehicle.

3 "Paragraph 34. I continued to fire
4 my weapon because his vehicle was still headed
5 towards us. I emptied all five rounds in the gun
6 and continued to fire even though there was no more
7 ammunition because the vehicle was still moving
8 towards me.

9 "Paragraph 35. When I fired my
10 weapon I was confident in my accuracy that I would
11 hit him and not harm anyone else, including the
12 passenger in the vehicle. I believe that I began to
13 fire my first shot when the vehicle was
14 approximately 50 feet away from me, to the best of
15 my recollection at this time.

16 "Paragraph 36. I did not move my
17 position while I was firing my weapon other than
18 blading my body to shoot more accurately and limit
19 my exposure to him hitting me.

20 "Paragraph 37. I do not believe my
21 intake of alcohol that evening impaired my ability
22 during this incident.

23 "Paragraph 38. His vehicle
24 eventually stopped approximately 20 to 25 feet away
25 from where I was located. I immediately pulled out

DISTLER

1 my shield, which was around my neck but hidden
2 beneath my clothing.

3 "Paragraph 39. I then approached the
4 driver's side door of the Prius with my shield out,
5 my gun drawn, stating, 'Police. Don't move. You
6 are under arrest.' I observed that the windshield
7 was still in its place but shattered. It appeared
8 that my shots had damaged the windshield.

9 "Paragraph 40. I was attempting to
10 arrest him for trying to kill both me and my
11 girlfriend. I did not notice any injuries on the
12 subject.

13 "Paragraph 41. When I was standing
14 at the driver's side door I ordered this man to
15 unlock the door and he ignored my commands.

16 "Paragraph 42. I believe that I
17 smashed the driver's side window with the butt of my
18 weapon. I unlocked the car door with my left hand
19 and pulled it open.

20 "Paragraph 43. I attempted to remove
21 the driver from the vehicle in order to arrest him.
22 He resisted arrest and would not exit the vehicle.
23 He was saying, 'Fuck you. I am going to kill you,'
24 to me.

25 "Paragraph 44. A struggle ensued and

DISTLER

1 he was holding my gun with one hand and punching me
2 about the head with his other hand. The door was
3 open and I was leaning into the vehicle attempting
4 to pull him out. I did not deliberately smash him
5 in the nose with the butt of my gun.

6 "Paragraph 45. He then tried to
7 shift the vehicle and drive away.

8 "Paragraph 46. I was trying to
9 prevent him from shifting the car out of park.

10 "Paragraph 47. During the struggle
11 he ripped the gun out of my hand and I do not know
12 where it went. I did not drop it or lose it.

13 "Paragraph 48. He also was able to
14 shift the car into reverse and he began speeding
15 backwards, dragging me along side the vehicle.

16 "Paragraph 49. I was able to get my
17 feet under me and twist away from the car. I was
18 then hit by the driver's door which was still open.

19 "Paragraph 50. I was thrown to the
20 ground. I then immediately got up and started to
21 run away from his vehicle. Eddie was in front of
22 me. I was running towards him and when I caught up
23 to him the Prius hit both of us causing us to be
24 thrown to the ground.

25 "Paragraph 51. After getting up from

DISTLER

1 the ground I ran towards the Prius in an attempt to
2 read his rear license plate.

3 "Paragraph 52. I then called 911 and
4 told them that the guy tried to kill me. I
5 identified myself as a police officer. I said, 'Ten
6 seventy-eight.' I said that he stole my gun, that
7 he tried to run me over, and that I shot him. She
8 asked me if I was shot and I remember that I then
9 looked at myself and I was taking a while to look
10 and then she said, 'Where are you,' and then I ran
11 to look at the street sign. I believe I told the
12 911 operator that I did not know if I was shot. I
13 gave the 911 operator a description of the car and I
14 told her that the color of the license plate was
15 gold.

16 "Paragraph 53. I did not hear Eddie
17 say anything to me.

18 "Paragraph 54. Approximately three
19 to four minutes after the call the police arrived.

20 "Paragraph 55. A female officer
21 arrived on the scene and asked me about the gun and
22 ordered us to sit on the curb.

23 "Paragraph 56. I told her that the
24 gun was taken from me by the driver of the vehicle.
25 She then asked me what happened. I told her that

DISTLER

1 the guy tried to run me over and I shot him. I told
2 her that the guy took the gun.

3 "Paragraph 57. EMS arrived and we
4 were all transported to the hospital in one
5 ambulance. Me, Sophia, Jill, Eddie, one police
6 officer, and one EMT were transported to the
7 hospital together.

8 "Paragraph 58. En route to the
9 hospital I telephoned Mike Covais, my PBA trustee
10 and informed him that I was involved in an off-duty
11 shooting. I asked him to notify the desk officer
12 about this incident, and I told Mike that we were
13 okay.

14 "Paragraph 59. I did not speak with
15 anyone at the hospital about the incident other than
16 Sophia.

17 "Paragraph 60. The first Nassau
18 County officer I saw was Sergeant Maranese. I then
19 saw William Purcell and then I saw Mike Covais.
20 They both asked me if I was okay.

21 "Paragraph 61. I was then taken to a
22 cubicle and I saw other individuals, PBA attorney
23 Willard Miller and Chief Hunter. Both asked me if I
24 was okay and nothing more. I saw Suffolk County
25 bosses who I did not know by name. I could tell

DISTLER

1 they were bosses by their insignia.

2 "Paragraph 62. I did not have any
3 conversation with anyone from Suffolk County at the
4 hospital.

5 "Paragraph 63. Michael Covais told
6 him that Suffolk County wanted me to go to the
7 Second Precinct.

8 "Paragraph 64. I remained at the
9 hospital until I was driven to the Second Precinct
10 by my PBA rep. P.O. William Purcell.

11 "Paragraph 65. At the Second
12 Precinct I was interviewed by a detective from the
13 Suffolk County Police Department. I gave him a
14 written statement. He was the only person I spoke
15 with at the Second Precinct regarding the incident.

16 "Paragraph 66. In the conference
17 room at the Second Precinct I had a very brief
18 conversation with PBA attorney Willard Miller. This
19 was after I had already given my statement to the
20 Suffolk County detective.

21 "Paragraph 67. Sophia and I were
22 driven home from the Second Precinct by Michael
23 Covais." This statement is signed by Detective
24 Lieutenant Ralph Hoffman, myself, and Police Officer
25 Anthony DiLeonardo.

DISTLER

1 MR. BARKET: Can I give you a break
2 for a second?

3 THE WITNESS: Yes.

4 MR. BARKET: Is this hearing public?

5 MS. HILLER: The hearing can only be
6 made public at your client's request.

7 MR. BARKET: Okay. So obviously we
8 haven't done that.

9 Is the proceeding part of the
10 officer's confidential file?

11 MR. SANTIAGO: It is.

12 MR. BARKET: So it shouldn't be
13 discussed with anybody? Nobody should
14 know about this -- the testimony or
15 anything like that?

16 MR. SANTIAGO: These proceedings are
17 confidential unless the officer requests
18 the public to participate or view the
19 hearing.

20 MR. BARKET: We clearly haven't done
21 that. Okay. Just curious.

22 MS. HILLER: Do you want to take a
23 break?

24 MS. DISTLER: Do you want me to
25 continue reading statements?

DISTLER

1 MS. HILLER: Yes. I need all of them
2 read in. Let's take a break.

3 INSPECTOR MICHAEL STUDDERT: Let's
4 take a ten minute break.

5 (Whereupon, a brief recess was
6 taken.)

7 HEARING OFFICER STUDDERT: Back on
8 the record.

9 MS. HILLER: So, for the record,
10 after a brief recess, Sergeant Distler
11 just completed reading in the first of the
12 statements that we're asking to be read
13 into the record.

14 DIRECT EXAMINATION

15 BY MS. HILLER:

16 Q You can continue. You can continue on
17 reading the rest of them in, and then we'll break
18 after that.

19 A The second statement is a PDCN 206A, which
20 is titled Police Department, County of Nassau, New
21 York, Incident/Accident Statement, dated February
22 27, 2011. Member involved, Police Officer
23 DiLeonardo, Serial No. 9013; Command, Third
24 Precinct.

25 Check box incident, date of

DISTLER

1 occurrence 2/27 of 2011; time of occurrence 0115;
2 location, Oakwood Road, Tippen Drive, Huntington.

3 "While acting within the scope of my
4 official duties, I was injured when I attempted to
5 place the subject under arrest. I sustained
6 injuries to both hands, my left forearm, my left
7 leg, and my ears. These injuries resulted from the
8 subject hitting me with his car and from me breaking
9 the driver's side window in an attempt to arrest the
10 subject."

11 It's signed by Police Officer Anthony
12 DiLeonardo.

13 MR. BARKET: See, I told you I'd give
14 you a break.

15 THE WITNESS: That was too quick.

16 MR. BARKET: Okay. Sorry. Keep
17 going.

18 MS. HILLER: Every time you do that,
19 I think Newsday is on the phone or
20 something.

21 MR. BARKET: Well, you're prophetic.
22 You should know. I've gotten a call, an
23 inquiry from —

24 THE COURT REPORTER: Do you want this
25 on the record?

DISTLER

1 MR. BARKET: Yeah, I do.

2 This hearing was originally
3 scheduled, I think, in February, and prior
4 to the hearing I had several inquiries
5 from Newsday about the nature of the
6 hearing, when it was going to begin. I
7 was told from the reporter when it was
8 scheduled to begin and what was going to
9 take place. I deferred or demurred on my
10 comments about it, other than to say I
11 didn't think it would take place, and it
12 ended up being adjourned until today.

13 I — as we're sitting here, I've
14 gotten multiple e-mails from Patrick
15 Whittle, who is a reporter at Newsday,
16 telling me that "We were told DiLeonardo
17 has an administrative hearing in Mineola
18 today. I would like to know when, where,
19 and if it's public."

20 "Who told you that?"

21 "Sources."

22 So apparently somebody from the
23 Department has leaked this, which is
24 troubling to me, because it was leaked the
25 first time when the hearing was scheduled,

DISTLER

1 and then it's leaked again. I think over
2 lunch I'll consider what remedy I'm going
3 to ask for, but certainly disbanding the
4 hearing at this point in time certainly
5 seems appropriate to me. But I'll -- I'll
6 reserve. It really is -- the opening
7 statement that I gave that this is all
8 being driven by Newsday seems to be
9 correct. I mean, the only people who know
10 about this hearing are myself, Officer
11 DiLeonardo, and the union. It's
12 inconceivable that any of us would have
13 leaked this to Newsday.

14 MS. HILLER: And the witnesses that
15 have now been subpoenaed, which we don't
16 have much control over with that.

17 MR. BARKET: Well, the witnesses
18 weren't subpoenaed before it was leaked
19 the first time, so somebody in the
20 Department has been leaking this. It
21 really is just unfortunate that the
22 Department seems to be driven by Newsday's
23 inaccurate reporting, and then serving
24 them up notice of when the hearings are
25 taking place.

DISTRICT

1 HEARING OFFICER STUDDERT: Okay. The
2 record reflects your concerns.

3 MS. HILLER: Do you want us to
4 proceed with the statements, and then
5 you'll --

6 MR. BARKET: Yeah. We'll break at
7 lunch, I'll look at this and think about
8 it some.

9 THE WITNESS: Okay. The next
10 statement is a statement from the Police
11 Department, County of Suffolk, dated
12 February 27, 2011, one of three pages.
13 There's three pages in total.

14 "I, Jillian Bienz, being duly sworn,
15 deposes and says that I am 24 years old.
16 I was born on 7/21 of 1986. I live at 1
17 Barley Place, Commack, New York, with my
18 husband, Edward Bienz. Last night I was
19 out with my husband, Edward. We were in
20 my husband's Acura TL, which is blue. He
21 was driving. We were out with another
22 couple, Anthony DiLeonardo and his
23 girlfriend, Sophia. I don't know her last
24 name. They were in a white Infiniti.
25 Anthony was driving.

DISTLER

1 "We were coming from The Artful
2 Dodger in Huntington Village, which is a
3 bar. We were driving towards Jericho
4 Turnpike, and we made a wrong turn. We
5 pulled over to the side of Oakwood Road
6 opposite Stimson Middle School. We pulled
7 over to the right side. We were going to
8 make a U-turn.

9 "Anthony had pulled up behind us.
10 Anthony had got out of his car to talk to
11 us. As we were stopped there, a taxi
12 pulled up and stopped next to Anthony's
13 car. There was some yelling and cursing
14 between Anthony and the people in the
15 taxi. The people in the taxi were doing
16 most of the yelling.

17 "The taxi revved his engine and
18 accelerated in reverse and stopped behind
19 Anthony's car. Ed saw the taxi back up
20 and got out of our car."

21 It's signed. This is the end of page
22 1, signed by Jillian Bienz. Continued on
23 page 2.

24 "I got out of our car also, and I
25 stood next to our car, between the door

DISTLER

1 and the car. I saw Anthony holding
2 something up in his hand. I thought it
3 was his shield, but I'm not sure. It was
4 definitely not a gun. He was moving to
5 the back of his car, and he was yelling
6 that he was a police officer and telling
7 the driver to stop the taxi.

8 "The taxi started accelerating
9 towards Anthony. Anthony was still
10 yelling at the guy to stop the car. Then
11 I saw a gun in Anthony's hand. He was
12 still yelling at the taxi, and then I
13 heard gunshots. I don't know how many I
14 heard. I turned away and covered my head
15 with my arms.

16 "Sophia started screaming. Sophia
17 and I moved towards each other on the
18 grass on the side of the road from where
19 she was standing on the passenger side of
20 Anthony's car. After I reached Sophia, I
21 looked up and saw the taxi in the middle
22 of the road. I saw my husband rolling
23 down the middle of the street, and Anthony
24 was at the window of the taxi at the
25 driver's door.

DISTLER

1 "I'm not sure if the taxi was moving
2 at" — that was the end of page 2 — "at
3 that time, because I was focused on my
4 husband. Then I saw Anthony moving
5 towards Ed to see if he was okay. The
6 taxi had backed up, made a U-turn, and
7 left.

8 "Anthony called 911 immediately. We
9 waited for the police to come. We had a
10 couple of drinks last night, but I did not
11 think my husband or Anthony was
12 intoxicated. I am not aware of anything
13 that went on between us and the taxi
14 before he stopped next to us. I never saw
15 the taxi before he stopped next to us.

16 "I have read the above statement
17 consisting of three pages taken by
18 Detective Ciccotto here at the Second
19 Precinct, and I swear it is all true."

20 Signed by Jillian Bienz and sworn to
21 before me February 27, 2011, Alfred
22 Ciccotto, as a notary.

23 The next statement is a three-page
24 statement from the Police Department,
25 County of Suffolk, New York, Advice of

DISTLER

1 Rights. It's got a complaint number on
2 it, 11-95045. One of three pages.

3 The top part states: "You must
4 understand your rights before being asked
5 any questions. Your rights. You have the
6 right to remain silent." It's initialed
7 by TMM.

8 "Anything you say can and will be
9 used against you in a court of law."
10 Initials by TMM.

11 "You have the right to talk to a
12 lawyer right now and have him present with
13 you while you are being questioned."
14 Initialed by TMM.

15 "If you cannot afford a lawyer and
16 want one, a lawyer will be appointed for
17 you by the court before any questioning.
18 If you decide to answer questions now
19 without a lawyer present, you will have
20 the right to stop the questioning at any
21 time until you talk to a lawyer."
22 Initials TMM.

23 "Waiver of Rights. Do you understand
24 each of these rights I have explained to
25 you?"

DISTLER

1 Answer: "Yes." IMM.

2 "Having these rights in mind, do you
3 wish to talk to me/us now?"

4 Answer: "Yes." IMM.

5 And it's got a signature of
6 defendant, which is hard for me to
7 decipher, but I would assume it says it's
8 Thomas Moroughan's signature.

9 The date is 2/27 of '11. The time is
10 0700 hours. The witness is Detective
11 Charles E. Lesser II. 951.

12 "Sworn to me before -- "this 27th day
13 of February, 2011, Charles -- "Detective
14 Charles E. Lesser."

15 "State of New York, County of
16 Suffolk. I, Thomas Moroughan" -- uh --
17 solely -- it's hard for me to read on this
18 copy. He's got initials next to it as if
19 he crossed out underneath.

20 "Being" -- "being duly sworn, deposes
21 and says: I was born August 17th [sic],
22 1984, in Stony Brook -- and he crosses out
23 August 19th, and above it that's the July
24 23rd. That's his birth date -- "in Stony
25 Brook, New York. I live at 143 West 19th

DISTRICT

1 Street, Huntington Station.

2 "On February 27, 2011, at about 1:10
3 to 1:15 A.M., I was driving a white Prius
4 taxi for Dobro Express. I was working a
5 6:00 p.m. to 6:00 a.m. shift, and at that
6 time I had my girlfriend in the car with
7 me. Her name is Kristie Mondo. I had
8 been working for the company for one week.

9 "My shift started with me having a
10 bad day. There was a lot of traffic, and
11 I wasn't making any lights. Some time
12 after 2:00 a.m. a blue Acura passed me,
13 and I got annoyed and flashed my high
14 beams at him. I left them on
15 continuously. I was mad at the way the
16 guy was driving.

17 "A white car then came up behind me
18 and flashed his bright lights at me. At
19 that time I was driving" -- he had written
20 southbound, and he crossed it out,
21 initialed it, and put westbound -- "on
22 West Hills Road." He crossed out New York
23 Avenue, initialed it -- "in Huntington
24 Station.

25 "The white car passed me, and I got

DISTIER

1 pissed off and followed the cars. I drove
2 west on West 19th Street, then north on
3 Oakwood Drive. I saw the two cars parked
4 on the side of Oakwood Drive at Tippen
5 Street. I rolled down my passenger window
6 and pulled next to the white Infiniti. I
7 yelled to the guy who was in his
8 mid-twenties and white: 'Why don't you
9 learn how to drive, you fucking asshole?'

10 He cursed back at me, and we yelled
11 back and forth. I went to get out of my
12 car, and so did the guy in the white car,
13 and so did the guy in the blue car, who
14 was stopped directly in front of the white
15 car.

16 I then got back in my car and backed
17 it up. I continued yelling at the guy in
18 the white car, and he yelled back. The
19 guy in the white car started walking
20 towards my car, and I revved my engine. I
21 drove forward toward the guy who was
22 standing in the street near his white car.

23 I then saw the guy fire about three
24 or four shots at my car, and I felt I was
25 hit. I felt he fired at me to protect

DISTLER

1 himself because I drove at him. The guy
2 then came up to my driver's window and
3 smashed his gun, busting my window and
4 hitting me in the face.

5 "The guy told me to get out, and we
6 struggled. He said he was a police
7 officer and that I was under arrest. I
8 wasn't sure he was a cop, so I drove
9 backwards. My door was still open, and as
10 I went backwards, I knocked the guy down.

11 "I know the gun had a revolver. When
12 I went forward with my car, I meant to go
13 backwards, but I had trouble shifting. At
14 the end, I drove to the hospital, and my
15 girlfriend called 911 as I drove to the
16 hospital.

17 "I have read this three-page
18 statement Detective Tavares has written,
19 and I swear it is true.

20 Signed by Thomas Moroughan. "Sworn
21 before me on the 27th day of February by
22 Detective Charles E. Lesser."

23 Next statement. Police Department,
24 County of Suffolk, dated 2/27 of 2011.
25 It's a three-page statement.

DISTLER

1 "I, Kristie Mondo, being duly sworn,
2 deposes and says: I am 23 years old. I
3 was born on 8/29/87. I live at 143 West
4 19th Street in Buntington Station with my
5 boyfriend, Thomas Moroughan.
6 "Tonight I was riding around with my
7 boyfriend in his taxi. He was working.
8 At about 1:00 a.m. we were on West 19th
9 Street to pick up a trip. There was a
10 blue Acura driving in front of us. I
11 wasn't paying much attention to what
12 happened, but I think something happened
13 with this car for my boyfriend to put his
14 high beams on the car.
15 "The car was driving" -- she crossed
16 out bag, initialed it, and put erratic.
17 "He was driving a little bit from
18 side to side on the road before my
19 boyfriend put his high beams on their car.
20 "There was a white Infiniti driving
21 behind us. When my boyfriend turned his
22 high beams on, the white car behind us
23 started flashing their high beams at us.
24 My boyfriend started driving slow to piss
25 off the car behind us. The car behind us

DISTLER

1 passed us. My boyfriend sped up as he was
2 passing us, to try and prevent him from
3 passing us, but he still passed us.

4 "We were now driving behind the two
5 cars. We came to a red light at West 19th
6 Street and Oakwood Road. The other two
7 cars turned right on red. My boyfriend
8 waited until the light turned green, and
9 then he turned right on Oakwood Road.

10 "We were heading north on Oakwood
11 Road when we saw the two cars stopped on
12 the right side of the road. My boyfriend
13 stopped next to them and started yelling
14 at them to learn how to drive. Everybody
15 was cursing at each other. The blue car
16 was parked up on the right side of the
17 road in front of us about 10 or 15 feet.
18 I saw a guy in an orange shirt standing in
19 the road next to that car.

20 "My boyfriend was trying to do
21 something with the gearshift. I don't
22 know if he was going forward or backward,
23 because there was a lot of yelling going
24 on, and I wasn't paying attention. Then
25 the guy in the orange shirt started

DISTLER

1 shooting at the car. I think he fired two
2 times. I was sitting in the front
3 passenger seat, and I ducked down.

4 "I was ducking down when I heard my
5 boyfriend's window to his door break. It
6 shattered. I looked up, and my boyfriend
7 was struggling with the guy in the orange
8 shirt. He said he was a cop and that my
9 boyfriend was going to jail.

10 "The driver's door was open, and he
11 was trying to drag my boyfriend out of the
12 car. My boyfriend was struggling with the
13 guy when I heard, I think, one shot. I
14 didn't see where the gun was when I heard
15 the shot. I never actually saw the gun,
16 but even though I couldn't see it, I could
17 tell we were being shot at when the guy
18 was in front of the car and I heard —
19 "and I heard the shot when he was
20 struggling at the door with my boyfriend.

21 "After that last shot, my boyfriend
22 put the car in reverse and started driving
23 backwards, with the guy in the orange
24 shirt hanging onto the door. Then the guy
25 fell off the door, and Tommy drove away.

DISTLER

1 "Tommy" — "Tommy's car -- "Tommy
2 said he was bleeding and he thought he was
3 shot. I told him to drive to the
4 hospital, and I called 911.

5 "I have read the above statement
6 consisting of three pages taken by
7 Detective Ciccotto here at Huntington
8 Hospital, and I swear it is all true."

9 Signed by Kristie Mondo. "Sworn to
10 before me on February 27, 2011. Alfred M.
11 Ciccotto, Notary Public."

12 The next statement is a three-page
13 statement of Eric Klug. This is a
14 statement that I took from Mr. Klug.

15 "My name is Eric Klug. I am 25 years
16 of age, having been born on 7/6/1986. I
17 currently reside at 422 Oakwood Drive,
18 Huntington, New York, with Sabrina Torres,
19 friend" — "my friend. My home telephone
20 number is" — there is no home phone.

21 It's blank. "My cell phone number is
22 631-522-5906. I am currently employed by
23 contracting through private contractors."
24 The telephone number there is blank.

25 "I have been advised by Sergeant

DISTLER

1 Jo-Ann Distler, and I understand that any
2 false statement made herein is punishable
3 by a Class A misdemeanor pursuant to
4 Section 210.45 of the Penal Law of the
5 State of New York.

6 "On February 27, 2011, at around 1:00
7 a.m., I was sitting on my couch in my
8 living room, playing a video game, when I
9 heard a screeching sound and I heard what
10 I thought was a gunshot. I looked out of
11 my front picture window, and I saw a man
12 with a gun walking towards a white car
13 which was stopped in the middle of the
14 road. The man with the gun was shooting
15 his gun at the windshield of the car. I
16 saw the flash coming from the gun.

17 "The white car was stopped in the
18 travel lane of Oakwood Drive, facing
19 northbound. I saw a white Infiniti was
20 parked on the roadway, also facing
21 northbound. The white car which was being
22 shot at had a male driver and a female
23 passenger. The female passenger was
24 yelling.

25 "Immediately as I looked at the car

DISTLER

1 which was being shot at, I saw the white
2 car begin to move in reverse. As the car
3 was backing up, the man that was shooting
4 at the car was continuing to move towards
5 the car as he was shooting. The female
6 passenger opened the door and got out of
7 the vehicle" — "got out of the white car
8 which was being shot at. She was yelling.
9 I saw her get knocked to the ground
10 because the white car was backing up.

11 "The man that was shooting at the car
12 made it to the front of the hood of the
13 white car before the white car was able to
14 move away in reverse. I did not see the
15 female get back into the white car,
16 because they were out of my vision.

17 "I could not see if the man that was
18 shooting had anything in his hand, but I
19 believe he may have had something large
20 around his neck.

21 "I left the window and went to call
22 911. When I looked out the window again,
23 I saw three people sitting on my lawn, and
24 the police were there.

25 "When the shots were fired, I heard

DISTLER

1 one shot, then I looked out the window,
2 and the other shots seemed to be grouped
3 together without hesitation.

4 "I am giving this statement to
5 Detective Sergeant Distler. I am
6 currently present at 422 Oakwood Drive,
7 Huntington, New York, giving this
8 statement to Sergeant Jo-Ann Distler of
9 the Nassau County Police Department
10 Internal Affairs Unit, who is writing it
11 down for me. I have read this statement
12 that consists of three pages, and it is
13 the truth. I have initialed any
14 corrections and signed all of the pages."

15 Signed by Eric Klug, 422 Oakwood
16 Road, Huntington Station, New York, and
17 signed by myself, Detective Sergeant
18 Jo-Ann Distler.

19 The next statement is a statement
20 taken of Police Officer Edward Bienz by
21 myself. It is dated March 13, 2012. It's
22 addressed to the Commanding Officer,
23 Internal Affairs Unit, from Police Officer
24 Edward Bienz, Serial No. 8943, Shield No.
25 3466, subject, IAU27-2011.

DISTLER

1 "Paragraph 1. I am making this
2 statement for administrative purposes
3 only. I have not done so voluntarily, but
4 in compliance with an order of a superior
5 officer. This statement in no way
6 constitutes any waiver of my rights, and
7 this statement or any part thereof may not
8 be used against me in any subsequent
9 criminal proceeding.

10 "Paragraph 2. On or about February
11 25th, 2011, I had made plans to go out to
12 dinner with my wife, Jillian Bienz, and my
13 cousin Christopher Bienz and his
14 girlfriend. I was doubled up with P.O.
15 Anthony DiLeonardo while I was making
16 these plans. He suggested that he and I
17 should hang out together some evening. I
18 had never socialized with him before. I
19 invited him to join us for dinner on
20 February 26, 2011. My cousin Christopher
21 ended up canceling due to illness. My
22 wife and I decided to keep our plans with
23 Anthony and his date, Sophia Cornia, who I
24 was meeting for the first time.

25 "Paragraph 3. On February 26, 2011,

DISTLER

1 we all met at Black Forest Brew Haus,
2 Farmingdale, New York, at about 8:00 p.m.
3 We had appetizers and dinner. I had three
4 house-brewed beers. Anthony had at least
5 two vodka mixed drinks. My wife had a
6 martini, and Sophia had a mixed vodka
7 drink. We paid our bill with cash and
8 left about 9:30 or 10:00 p.m. We left and
9 drove to Huntington, with Anthony and
10 Sophia following me. I was driving my
11 car, and Anthony was driving Sophia's car.

12 "We went to Blue Hamu, where I had --
13 I had a beer and Anthony had a vodka
14 drink. The women both had a drink, but
15 they did not finish their drinks. It was
16 hot and crowded, and we left after about a
17 half hour. We went across the street to
18 the tavern, where I had two beers.
19 Anthony had two vodka mixed drinks, and
20 the girls had one drink each.

21 "We stayed there for about an hour
22 before walking to The Artful Dodger. I
23 had two beers at The Artful Dodger, and
24 Anthony had two vodka mixed drinks. The
25 women may have had one drink. We probably

DISTLER

1 stayed there for about an hour. We paid
2 all our tabs with cash, and we split the
3 bills.

4 "Paragraph 4. We discussed doing
5 something else, but we all decided to call
6 it a night and head home at about 1:00
7 a.m. Anthony was unfamiliar with the
8 area, and I told him to follow me down
9 Route 110 and I would get him to Jericho
10 Turnpike. I was driving my car, and
11 Anthony was driving Sophia's car —
12 driving Sophia's car. I was aware of his
13 car following me.

14 "I made a wrong turn when I merged
15 right onto West Hills Road, which became
16 19th Street. I then made another wrong
17 turn when I turned right onto Oakwood
18 Drive traveling northbound and away from
19 Jericho Turnpike. My wife commented that
20 I was going the wrong way. I was not in
21 contact with Anthony on our cell phones.

22 "I pulled over to the shoulder of the
23 road in order to tell Anthony that we
24 needed to turn around. At no time was I
25 in a confrontation or road rage type of

DISTLER

1 incident with any other car or driver. No
2 one flashed their lights at me, and I had
3 not been flashing my lights at any other
4 vehicle.

5 "Paragraph 5. Anthony pulled up
6 behind me slightly offset from my vehicle.
7 My wife got out on her side of the car and
8 began walking back towards Anthony's
9 vehicle to tell them that we needed to
10 turn around. I was watching in the rear
11 and side-view mirrors. I saw a smaller
12 white compact car, which I later was told
13 by a Suffolk County detective that it was
14 a cab, pull up adjacent to Anthony's car.

15 "I initially thought Anthony was
16 waving the vehicle to go around him. My
17 wife got to within 10 feet of Anthony's
18 car when she began backpedaling to our
19 car. I saw Anthony get out of his car and
20 a male white get out of the driver's side
21 of the cab. My window was up, and I could
22 not hear what they were saying, but I
23 could tell by their body language that
24 they were having an angry exchange.

25 "Paragraph 6. The cab driver was

DISTLER

1 standing near the driver's side quarter
2 panel of his car, and Anthony was in
3 between his car and the cab. They were
4 talking to each other over the hood of the
5 white cab. The cab driver reentered his
6 car and backed it up. I got out of my car
7 to join my wife, who was standing near the
8 rear quarter panel of the trunk of my car.

9 "Paragraph 7. I asked Jill what
10 happened -- what had happened. She said,
11 'I don't know. They were yelling.'

12 "Anthony was still standing near his
13 door. He began walking toward the rear of
14 his vehicle. I couldn't see his hands. I
15 don't recall hearing Anthony saying
16 anything. The other car backed up about
17 three to four car lengths -- three to four
18 car lengths behind Anthony's car. I
19 believe the other car was stopped. I did
20 not hear the revving of an engine. I
21 later learned at the hospital that this
22 other car was a cab.

23 "Paragraph 8. I was continuing to
24 stand behind my car and in front of
25 Anthony DiLeonardo's car when I heard

DISTLER

1 gunshots. I thought I heard three
2 gunshots. I immediately ducked down and
3 cover" -- "I immediately ducked and
4 covered my head. I heard the other car's
5 brakes lock up. Up to this point I did
6 not know that Anthony DiLeonardo was
7 carrying a weapon. I did not have my
8 weapon or shield with me, although I had
9 my ID card.

10 "Paragraph 9. When I looked up after
11 the shots had stopped, I heard the cab
12 brakes locking up, and I observed that the
13 cab had advanced about two car lengths in
14 the travel lane before it came to a stop
15 approximately 15 to 20 feet from Anthony
16 DiLeonardo.

17 "I saw Anthony DiLeonardo run up to
18 the driver's side of the cab and begin
19 smashing the driver's window with his
20 weapon in his right hand, causing it to
21 shatter. He was yelling, 'You're under
22 arrest.' This was the first time that I
23 saw Anthony's gun in his hand.

24 "He managed to get the car door open
25 and was trying to pull the driver out of

DISTLER

1 the vehicle. Anthony had his gun in his
2 right hand and appeared to be attempting
3 to pull the driver out with his right hand
4 by grabbing the driver's upper torso, and
5 simultaneously Anthony was reaching inside
6 the vehicle with his left hand. I believe
7 the gun to still be loaded. It also
8 appeared that the driver -- it also
9 appeared that the driver was trying to
10 push Anthony out of the car.

11 "I ran towards the cab with the
12 intention of helping Anthony secure his
13 weapon. As I got to the driver's-side
14 quarter panel of the cab" -- "driver's
15 side quarter panel, the cab turned his
16 wheel to the right and backed up, clipping
17 me and causing me to hit and roll on the
18 pavement. I ended up in the southbound
19 lane of traffic.

20 "I never got the" -- "I never got to
21 the driver, and I did not have any
22 physical contact with him. I was not
23 aware of any other persons in the cab
24 until I heard a female screaming. I did
25 not observe Anthony with his shield out at

DISILER

1 any time the whole evening. I did not
2 know that he had his shield on him.

3 "Paragraph 10. I eventually got up
4 and went over to the sidewalk. My wife
5 was on the sidewalk, and she was upset. I
6 don't recall seeing any other people in
7 the vicinity, nor do I recall any specific
8 vehicular traffic. I think Sophia
9 remained in her vehicle until everything
10 was over. Anthony was standing in the
11 street talking on the phone with 911
12 immediately, and stayed on the phone until
13 Suffolk County police arrived.

14 "I said to Anthony, 'Dude, what the
15 fuck did you just do?' I don't recall him
16 responding to me or saying anything to me
17 at this point. I don't recall him telling
18 me to get on the sidewalk. I don't recall
19 asking him if he had his gun with him.
20 Anthony did tell me at some point that he
21 lost his gun in the cab.

22 "Paragraph 11. A Suffolk County
23 female P.O. arrived and asked me what
24 happened. I don't recall what my response
25 was, other than I got hit by the car. She

DISTLER

asked me if I had lost consciousness. I think I said 'Kind of.' I was in a daze. I was put in a neck brace and placed on an — placed in an ambulance. One or two EMTs, my wife, and a male white Suffolk County PD P.O. accompanied me to Huntington Hospital. I don't know if anyone else was in the ambulance with me.

Paragraph 12. When I arrived at Huntington Hospital I received treatment, and I was placed in a room by myself. Anthony DiLeonardo came to my room in the hospital and spoke to me briefly. He told me that the cab driver had tried to run him over. He also told me that he had lost his gun in the cab. Sergeant Maranese came to the hospital and asked me if I was all right. He did not ask me what happened. At least one Suffolk County detective spoke to me and asked me what happened. I don't know the identity of this detective or detectives. Mike Covais came to the hospital and asked if I was all right. We did not discuss the particulars of the incident. Jim Carver,

DISTLER

2 Alex Phillippas, Bill Purcell, and Brian
3 McQuade also came to the hospital to ask
4 how I was. I recall two higher-ranking
5 officers coming to the hospital to ask me
6 how I was doing. I do not know who they
7 were. They did not discuss the incident
8 itself, nor did they ask me if I had been
9 drinking.

10 "Paragraph 13. While at the
11 hospital, I was x-rayed and treated for
12 abrasions and contusions. I am not
13 signing an authorization for release of my
14 medical records, on the advice of my
15 attorney, William F. Miller, who is
16 present with me.

17 "Paragraph 14. After I was released
18 from the hospital, I was driven to Suffolk
19 County Police Department Second Precinct
20 by Brian McQuade. Anthony -- Anthony
21 DiLeonardo was transported in another
22 vehicle. We were in a common area along
23 with at least one Suffolk County
24 detective. I was interviewed by the
25 Suffolk County Homicide Squad while at the
Second Precinct. I gave them a verbal

DISTLER

1 account of the facts and circumstances of
2 the incident. After the interview was
3 completed, my wife and I were driven home
4 by Brian McQuade.

5 "Paragraph 15. I do not know who
6 notified the Nassau County Police
7 Department of this incident.

8 "Paragraph 16. I have not given any
9 written statements other than a brief
10 narrative in my workers' compensation
11 report.

12 "Paragraph 17. I have been
13 interviewed by the Suffolk County Police
14 Department Homicide Squad and the Suffolk
15 County DA investigators. These interviews
16 were not reduced to writing, nor have I
17 signed any statements. I have not given
18 any other statements."

19 Signed by Police Officer Edward Bienz
20 and signed by myself, Detective Sergeant
21 Jo-Ann Distler.

22 Two more short ones. Okay. The next
23 statement is a transcript of a 50-H
24 hearing In The Matter of the Claim of
25 Thomas Moroughan Against The County of

DISTLER

1 Nassau, and Police Officer Anthony
2 Dileonardo, Shield 3632, Nassau Police
3 John Does 1 through 10, The County of
4 Suffolk, Detective Charles E. Lesser II,
5 and P.O. William J. Lamb and Suffolk
6 Police John Does 1 through 10.

7 "Deposition of Thomas M. Moroughan,
8 the claimant in the above-captioned
9 action, held on the 20th day of July,
10 2011, at 1:45 p.m., at the Office of the
11 Suffolk County Attorney, H. Lee Dennison
12 Building, 100 Veterans Memorial Highway,
13 Hauppauge, New York, pursuant to Notice of
14 Claim, and before Judi Gallop, a Notary
15 Public of the State of New York."

16 Page — beginning on page 66. Thomas
17 Moroughan. It's a continuation from a
18 prior page, so I'll just read what it
19 says.

20 "You first started to move the car
21 forward at the time you heard the shots.
22 Do you know how much time went by?

23 "Mr. Grandinette: Objection. Asked
24 and answered. I believe he said he didn't
25 know exactly that it was simultaneously.

DISTLER

1 "Question: You said the guy came
2 over and put his arm to the window the way
3 that you described. Focusing on that same
4 period of time, do you know what the guy
5 in the blue Acura was doing?

6 "Answer: No idea.

7 "Question: Tell me what happened
8 after that, after the fellow hit --

9 "Answer: Hit me on my nose with the
10 butt of gun. That put me in a daze, kind
11 of out of it. The next thing I know, he
12 has my driver's door open, he's leaned
13 over me, he's punching me on the side of
14 my face and the head. At the same time,
15 he's trying to pull me out of the car.

16 "Question: Was he saying any words?

17 "Answer: No. Just, 'Get out the
18 car.'

19 "Question: Maybe I misunderstood.
20 Was he saying anything at all?

21 "Answer: Just, 'Get out of the car.'

22 "Question: Was he cursing at all?

23 "Answer: I don't recall.

24 "Question: Was your girlfriend
25 saying anything at that time?

DISTLER

1 "Answer: Yeah, my girlfriend was
2 screaming, 'Leave us alone. Leave us the
3 fuck alone.'

4 "Question: If you know, did he
5 respond to her at all?

6 "Answer: No.

7 "Question: Was he saying get out of
8 the car and had — and he had his hands on
9 you at the same time?

10 "Answer: Yes.

11 "Question: Punched you, as well?

12 "Answer: He grabbed me by my arm
13 with his left hand. He's punching me in
14 my face with his right arm.

15 "Question: The door was opened?

16 "Answer: The door was open.

17 "Question: Up to that point, other
18 than him saying, 'Get out of the car,' did
19 he ever say, 'You're under arrest' or
20 anything?

21 "Answer: No.

22 "Question: Did he identify himself
23 in any way as a police officer?

24 "Answer: Yes.

25 Question: By the way, did you come

DISTLER

1 to learn he was a police officer?"

2 Okay. The next statement is an
3 excerpt of a 50-H hearing held in Nassau
4 County. It's In The Matter of the Claim
5 of Thomas Moroughan against The County of
6 Nassau, Police Officers Anthony
7 DiLeonardo, Shield 3632, and Nassau Police
8 John Does 1 through 10, The County of
9 Suffolk, Detective Charles E. Lesser II,
10 P.O. William J. Lamb, and Suffolk Police
11 John Does 1 through 10.

12 Dated August 29th, 2011, at 12:44
13 p.m. 50-H Hearing of Thomas Moroughan
14 held at the offices of the Nassau County
15 Attorney, 1 West Street, Mineola, New
16 York, before Renate Reid, Registered
17 Professional Reporter and Notary Public of
18 the State of New York.

19 Page — page 132. Thomas M.
20 Moroughan. Mr. Ferguson speaking:

21 "Please give me the last question.

22 "Record was read back.

23 "Answer: I want to clarify,
24 actually, for the record. The five shots,
25 that I wasn't actually counting the shots.

DISTLER

1 I know it was five shots, from the
2 forensic report in which we received,
3 which I received later on. So my actual
4 knowledge of it being five shots is based
5 upon that, not based upon my recollection.

6 "Mr. Ferguson: What was the
7 question?

8 "Record read back.

9 "Mr. Ferguson: You can delete the
10 word 'five' if you want. You can say
11 'after the shots were fired.' What was
12 the rest of the question?

13 "Question: What happened next?

14 "Answer: The guy from the white
15 Infiniti approached the driver's side of
16 my vehicle. He busted open the driver's
17 window with the butt of his gun. He then
18 struck me in the face with the butt of the
19 gun, proceeded to open up my car door. He
20 was — reached over me. He was punching
21 me in my face. At that time, uh, I get
22 the car into reverse. I step on the gas,
23 and I backed up to drive away. And then I
24 swung myself around and drove away and
25 drove myself to the emergency room.

DISTLER

1 "Question: At this --

2 "Answer: He was just swinging away.
3 Like he punched me in my face at least ten
4 times.

5 "Question: As of this time, did you
6 have any knowledge that this person was a
7 police officer?

8 "Answer: No.

9 "Question: Had this person said that
10 they were a police officer?

11 "No.

12 "Question: Had this person -- this
13 had -- this person was wearing anything
14 that indicated that they were a police
15 officer?

16 "Answer: No."

17 HEARING OFFICER STUDDERT: Okay.
18 We'll adjourn for lunch at this point.
19 We'll be back here in one hour.

20 MR. BARKET: Could we have an hour
21 and a half?

22 MS. HILLER: I have no objection.

23 HEARING OFFICER STUDDERT: Okay.

24 Hour and a half.

25 (Whereupon, a lunch recess was taken

DISTLER

1 at 12:45 p.m.)

2 INSPECTOR MICHAEL STUDDERT: We're
3 back on the record. Let the record
4 indicate that Officer DiLeonardo, his
5 attorney, and his union rep are present.

6 Call the witness back.

7 MS. HILLER: Yes. The Department is
8 calling Joanne DeLorenzo back, Detective
9 Sergeant, to continue her testimony.

10 What did I say? Detective Sergeant
11 Jo-Ann Distler. Can P.A. DeLorenzo please
12 procure the witness for me?

13 MS. DELORENZO: Yes.

14 MS. HILLER: Thank you.

15 HEARING OFFICER STUDDERT: Sergeant
16 Distler, you're still under oath.

17 THE WITNESS: Yes.

18 MS. HILLER: So, I neglected to put
19 one statement in that I'm going to add to
20 the list here. So I'm passing up to the
21 hearing officer a statement of Sophia
22 Cornia, asking that it be marked into
23 evidence. It's a three-page statement.

24 HEARING OFFICER STUDDERT: Please
25 mark this.

DISTLER

(Sophia Cornia's Statement was marked as Department's Exhibit 16 for evidence, as of this date.)

MS. HILLER: I am asking that Department 16 be passed over to Detective Sergeant Distler, and I'd ask the detective sergeant to read it into the record in its entirety.

THE WITNESS: Exhibit 16 is a three-page statement from the Police Department, County of Suffolk, of Sophia Cornia.

"I, Sophia Cornia, being duly sworn, deposes and says: I am 23 years old. I was born on 5/1/87. I live at 23 Oakwood Avenue, Miller Place.

"Last night I was with my boyfriend, Anthony DiLeonardo. We were also with another couple named Jill and Eddie. We were in separate cars. Jill and Eddie were in a blue Acura. Eddie was driving. We were in my white Infiniti G25X. Anthony was driving. We went to dinner, and then we went to Huntington Village. At about 12:15 a.m. or 12:30 a.m. we left

DISTLER

1 The Artful Dodger, and we were following
2 Jill and Eddie to their house.

3 "We pulled over behind Jill and Eddie
4 on the right side of some road. I don't
5 know the name of the road. Anthony got
6 out to talk to Eddie, because I think we
7 were lost. I saw a white Prius taxi pull
8 up and stop next to my car. The taxi
9 driver was exchanging words with Anthony.
10 I couldn't understand what was being said.
11 It looked like Anthony was waving the taxi
12 on, telling him to go ahead of us.

13 "Eddie got out of his car and started
14 walking towards Anthony. Jill also got
15 out of the car and was on the passenger
16 side of our car" — "cars, on the grass.
17 I saw the taxi back up aggressively in
18 reverse and took a position behind my car.
19 The taxi was revving its engine. Anthony
20 moved to behind my car. He was between my
21 car and the cab. I could see that he was
22 holding his shield that he keeps on a
23 chain around his neck.

24 "I got out of my car. I was on the
25 grass by Jill. I heard the car revving

DISTLER

1 its engine. Anthony was saying something,
2 but I don't remember what it was. I was
3 standing outside my car when I heard
4 gunshots. I don't know how many shots. I
5 didn't see Anthony with a gun in his hand.
6 I didn't know who was shooting. I thought
7 Anthony might have been shot. I was not
8 facing them when I heard the shots.

9 "I started crying. I don't know
10 where Ed or Anthony was at that point.
11 The next thing I remember is the taxi
12 making a U-turn and driving away. Anthony
13 called 911. Anthony also told the" — it
14 looks like dispatcher — "that the cab
15 driver took his gun away. Anthony was
16 absolutely not intoxicated that night. He
17 only had a couple of drinks.

18 "I have read the above statement
19 consisting of three pages, taken by
20 Detective Ciccotto here in the Second
21 Precinct, and I swear it is all true."

22 Signed by Sophia Cornia. Sworn to
23 me, before Alfred Ciccotto, February 27,
24 2011.

25 BY MS. HILLER:

DISTLER

1 Q Sergeant Distler, was that report
2 something you -- that statement something that you
3 took into consideration during your investigation?

4 A Yes.

5 Q There are comments in that statement that
6 you just read with respect to the taxicab and
7 revving its engine.

8 A Yes.

9 Q Was there anything else with respect to
10 that statement that you looked into with respect to
11 your investigation?

12 A Yes. I actually went to the taxi station
13 at some point and examined the car after it had been
14 repaired, to determine if the cab could rev its
15 engine; along with reviewing the Suffolk County
16 reconstruction -- Shooting Incident Reconstruction
17 Report, which stated that vehicle is a hybrid
18 vehicle, which the engine does not rev. It cannot
19 rev like a normal engine because it's part electric,
20 part whatever else. I'm not a car person, so. And
21 I also went to the Toyota dealer in Hempstead and
22 had them demonstrate the car for me, a Prius.

23 Q So did you come to any conclusion with
24 respect to whether or not the car could rev its
25 engine?

DISTLER

2 A The vehicle in question cannot rev its
3 engine without a delay, a significant delay. There
4 is a significant delay —

5 MR. BARKET: I'm going to object to
6 this, because it seems to be expert
7 testimony well beyond this witness's
8 expertise.

9 MS. HILLER: I can rephrase.

10 MR. BARKET: And it's actually just
11 inaccurate. It's factually wrong, in
12 addition to being expert testimony that
13 shouldn't be allowed. I mean, if you're
14 going to try to put in testimony that a
15 vehicle can or can't do something, you've
16 got to be able to — especially if you're
17 going to do something that's just provably
18 wrong, it ought to be done through
19 somebody with the qualifications to speak
20 to the car.

21 BY MS. HILLER:

22 Q Sergeant Distler, did you review any
23 reports from Suffolk County with respect to the
24 vehicle?

25 A Yes.

 MS. HILLER: Can I have the witness

DISTLER

1 repass up the Suffolk County
2 reconstruction report? I'm not sure
3 what -- I think it's --

4 THE WITNESS: 1? 2?

5 THE COURT REPORTER: 6.

6 BY MS. HILLER:

7 Q With respect to that report, did you rely
8 on any of the information in that report with
9 respect to the capability of that car to rev its
10 engine?

11 A Yes.

12 Q What portions of that report would you be
13 referring to?

14 A On sheet number 5, the results and
15 conclusions, was stated: "Special consideration
16 must be given to the Dobro Express taxi, as it not
17 your typical car. This vehicle is a 2010 Toyota
18 Prius hybrid and operates in a manner totally
19 different from your normal passenger car, as it
20 operates under both electric and gasoline motors.
21 Having a key fob that contains an electric chip in
22 proximity of the vehicle, stepping on the brake
23 pedal and pushing a button on the dashboard starts
24 the car. A series of lights on the dashboard
25 indicate that the car is started and now ready to

DISTLER

1 drive.

2 "When the car is stopped, it is
3 totally quiet. As the car moves forward, the
4 electric motor is responsible for the initial
5 acceleration. Even when the car is pushed to full
6 acceleration, there is a very significant delay
7 before the gasoline engine starts, which slightly
8 increases the noise level. By the time the gasoline
9 engine starts, the vehicle has already accelerated
10 and covered significant distance. The vehicle very
11 easily shifts between forward, neutral, and
12 reverse."

13 MR. BARKET: I have the same
14 objection. There's no basis for the way
15 this conclusion is any better or based
16 upon any more expertise than the detective
17 sergeant has.

18 HEARING OFFICER STUDDERT: Okay. The
19 objection is overruled.

20 BY MS. HILLER:

21 Q Detective Sergeant Distler, if you know,
22 do you know if the Deadly Force Response Team had
23 this report when they came to their conclusions on
24 February 27, 2011?

25 A They did not.

DISTLER

1 Q And can you explain for the record what
2 the purpose is of the Deadly Force Response Team?

3 A It's to provide the police commissioner
4 with a preliminary report as to the circumstances
5 surrounding the incident.

6 Q And does the Deadly Force Response Team
7 have the benefit of -- or did they, I should say,
8 have the benefit of all of the information that you
9 did?

10 A No.

11 Q Okay. Regarding the two charges -- let me
12 go back.

13 Regarding the one charge for unlawful
14 conduct, with respect to the -- specifically the
15 criminal mischief, please explain for the record,
16 with respect to the items in evidence -- which with
17 respect to the items in evidence, if you need to be
18 refreshed, we can help you -- what you took into
19 consideration with respect to that -- what you
20 thought constituted criminal mischief.

21 A I reviewed the Suffolk County Shooting
22 Incident Reconstruction Report; the photographs
23 provided to me by the Suffolk County District
24 Attorney's Office of the crime scene; the statements
25 of Police Officer DiLeonardo, Police Officer Bienz,

DISTLER

1 Eric Klug, Thomas Moroughan, Kristie Mondo, Sophia
2 Cornia, and Jillian Bienz.

3 Q And specifically what led you to the
4 conclusion that this was -- this conduct constituted
5 criminal mischief?

6 MR. BARKET: Objection.

7 HEARING OFFICER STUDDERT: On what
8 grounds?

9 MR. BARKET: Her opinion is
10 irrelevant.

11 HEARING OFFICER STUDDERT: I'm going
12 to overrule.

13 You can answer the question.

14 A The facts that I reviewed. The crime
15 scene report showed that there was an -- Officer
16 DiLeonardo intentionally shot at the cab, causing
17 the damage.

18 Q What about the other portions that
19 constituted the criminal mischief?

20 A And he intentionally went over to the
21 driver's side window, smashed the window with the
22 butt of his gun.

23 Q Do we know -- do we know what it cost to
24 fix the car?

25 A I interviewed the owner of the cab

DISTLER

1 company, Mr. Boris Goldstein, in September of 2011,
2 and he stated to me that it was a couple of thousand
3 dollars to repair the vehicle.

4 Q Okay. After your investigation with
5 regard to this conduct that you felt constituted
6 criminal mischief, did you generate a report?

7 A Yes.

8 Q Okay. What is that report?

9 A It is a Violation of Department Rules and
10 Regulations, PDCN 209.

11 MS. HILLER: Okay. At this point I'm
12 going to be passing up a copy of the —
13 well, actually, I don't have multiples.
14 Sorry. So I didn't mean to do that. I'll
15 do one at a time.

16 I'm passing up PDCN 209 to be
17 marked -- just looking to see if it
18 delineates -- to be marked into evidence.
19 Counsel does have a copy of this. I'm
20 providing him another copy. It was
21 exchanged in discovery.

22 HEARING OFFICER STUDDERT: Does this
23 relate to Count 3?

24 MS. HILLER: This relates to Count 4,
25 I believe, the criminal mischief. This

DISTLER

1 relates to Count 4.

2 And I'd ask that -- is it -- what
3 number are we up to?

4 HEARING OFFICER STUDDERT: Mark it as
5 17.

6 (PDCN 209 FOR COUNT 4 was marked as
7 Department's Exhibit 17 for evidence, as
8 of this date.)

9 MS. HILLER: Can Department 17 be
10 passed to the witness.

11 BY MS. HILLER:

12 Q Do you recognize what's been marked as
13 Department's 17 in evidence?

14 A Yes.

15 Q What is that?

16 A This is a copy of the PDCN 209, Report of
17 Violation of Department Rules, which was served upon
18 Police Officer DiLeonardo.

19 Q Can you please read into the record the
20 "to-wit" clause of that 209, please?

21 A "While off duty, at time and place of
22 occurrence, P.O. DiLeonardo did violate New York
23 State Penal Law, 145-10, criminal mischief in the
24 second degree, a D felony. P.O. DiLeonardo did
25 intentionally damage the property of another person

DISTLER

1 when he fired five shots from his weapon at a 2010
2 Toyota Prius, New York Registration 13100TY,
3 damaging the windshield. P.O. DiLeonardo then
4 smashed the driver's side window of the vehicle with
5 his weapon, causing damage in a total amount
6 exceeding \$1,500.

7 "This charge is based upon
8 information and belief, the source of which includes
9 Suffolk County Shooting Incident Reconstruction
10 Report, Suffolk County Police Department crime scene
11 photographs, statements of Thomas Moroughan, Kristie
12 Mondo, Jillian Bienz, Sophia Cornia, Eric Klug, and
13 written statements of P.O. Bienz and P.O.
14 DiLeonardo."

15 Q After the 209 is generated and served on a
16 member, what happened procedurally next?

17 A The charge and the report supporting the
18 information, reporting the charge, gets submitted to
19 the DRB board, which is the Disciplinary Review
20 Board, consisting of five chiefs. They review the
21 charges, and they make a determination if they will
22 remain as 209s or if they convert them into charges
23 and specs.

24 Q And in this particular case what happened
25 as a result of the Disciplinary Review Board

DISTLER

1 meeting?

2 A This charge was converted into charges and
3 specs, into PDCN 210.

4 Q So there was a review by the board of your
5 initial findings.

6 A Yes.

7 Q Moving on to the second charge and spec,
8 which is out of order. We did 4 first. Now I'm
9 looking at Count 3 in the 210.

10 As a result of your investigation,
11 was Office DiLeonardo -- withdrawn. I'm sorry. I
12 lost my train of thought.

13 As a result of your investigation,
14 did you make any other conclusions with respect to
15 P.O. DiLeonardo?

16 A Yes.

17 Q And with respect to the rules and regs,
18 what did you conclude?

19 A That he violated Article 5, Rule 2, Sub 1,
20 unlawful conduct, in that his actions constituted
21 what could have been charged as an assault under the
22 New York State Penal Law.

23 Q And with respect to that, what did you
24 consider in your investigation with respect to that
25 charge?

DISTLER

1 A The Suffolk County Shooting Incident
2 Reconstruction Report; the Suffolk County
3 photographs; the statements of P.O. DiLeonardo, P.O.
4 Bienz, Thomas Moroughan, Kristie Mondo, Eric Klug --
5 not Eric Klug in that one -- Jillian Bienz, Sophia
6 Cornia, and the hospital records of Thomas
7 Moroughan.

8 Q With respect to the statements, are all
9 those statements in evidence already?

10 A Yes.

11 Q And specifically with respect to the
12 statements that are in evidence, what did you
13 consider with respect to your feelings on whether or
14 not he violated the penal law, assault second?

15 A There were statements from Officer
16 DiLeonardo which stated that he approached the car,
17 he smashed the window with the butt of his gun. And
18 also the statements of Thomas Moroughan where he
19 stated that he smashed the window with the butt of
20 his gun, striking him in the nose. His 50 -- Thomas
21 Moroughan's 50-B hearings in Suffolk County and
22 Nassau County, he testifies that he was struck
23 numerous times in the face by Officer DiLeonardo
24 with the butt of his gun and his fists. And Kristie
25 Mondo also made a statement that she observed her

DISTLER

1 boyfriend struggling with Office DiLeonardo at the
2 side of the car.

3 Q Did the Disciplinary Review Board -- I'm
4 sorry -- did the Deadly Force Response Team have the
5 transcript of the 50-H hearings before they made
6 their determination?

7 A No.

8 Q And with respect to -- oh. Sorry.

9 MS. HILLER: At this time I'm passing
10 up to the hearing officer portions of the
11 Huntington Hospital record with respect to
12 Thomas Moroughan, dated 2/27 of '11.

13 MR. BARKET: Sorry to interrupt. Are
14 you going to do the 209 for Count 3? Just
15 'cause I already wrote it down.

16 MS. HILLER: No, not yet. I'll get
17 there, though, tomorrow. Do you want me
18 to, Bruce?

19 MR. BARKET: Yeah. I already wrote
20 it down. That's okay.

21 MS. HILLER: Yeah, sorry.

22 I'm passing up the -- I'm passing up
23 four pages of the Huntington Hospital
24 record. I'm passing a copy over to
25 counsel. I believe counsel at least has

DISTLER

1 the first two pages and should have the
2 remainder of that, as well, in the
3 discovery package.

4 HEARING OFFICER STUDDERT: Please
5 mark this.

6 (Huntington Hospital Record was
7 marked as Department's Exhibit 18 for
8 evidence, as of this date.)

9 MS. HILLER: I would ask that what's
10 been marked as Department 18 be passed
11 over to Sergeant Distler.

12 BY MS. HILLER:

13 Q Sergeant Distler, do you recognize that
14 document?

15 A Yes.

16 Q And what is that document?

17 A It is a copy of the medical records of
18 Mr. Thomas Moroughan that I reviewed in this case.

19 Q As a result of your review of those
20 records, did you make any determinations with
21 respect to Mr. Moroughan?

22 A Yes.

23 Q And what would that be?

24 A That he had a fracture to his nasal bone.

25 Q Is that indicated in the record itself?

DISTLER

1 A Yes.

2 Q And can you read from the record --

3 A Yes.

4 Q -- the portions of that document that
5 indicated that to you?

6 A Yes. On page 1 of the report, of Exhibit
7 18, at bottom: "CAT scan of the face. Left nasal
8 bone fracture, medial displacement of fracture
9 fragments, and left soft tissue swelling."

10 On page 3 of Exhibit 18, the
11 impression states that there was a left-sided nasal
12 bone fracture with mild displacement of the fracture
13 fragments. There is facial soft tissue swelling,
14 most prominent on the left.

15 Q Based on your review of that record and
16 based on the -- so far you said the statements of
17 Thomas Moroughan plus the other witnesses, what made
18 you conclude that P.O. DiLeonardo did in fact break
19 Tom Moroughan's nose?

20 A The -- hospital reports. The findings in
21 the hospital reports.

22 Q What about his actions led you to believe
23 that?

24 A His statement. The statement of the
25 witnesses. The statement of Mr. Moroughan.

DISTLER

1 Q Specifically, though?

2 A Specifically that he -- that he struck him
3 in the face with the butt of his gun and punched him
4 numerous times in his face.

5 Q Was there something in the Suffolk County
6 Reconstruction Incident Report that you also
7 reviewed with respect to this charge?

8 A Yes.

9 Q Do have the report?

10 A Yes.

11 Q And that's Department 6.

12 A On Sheet number 5 of 6, in the results and
13 conclusions portion, it states that the --
14 DiLeonardo approaches the driver's door, then
15 shatters the driver's window with his revolver. The
16 taxi backed up, now in reverse, begins to back up as
17 a struggle ensues to extract Moroughan from the
18 vehicle.

19 Q And as a result of your investigation with
20 respect to the conduct that you felt constituted
21 assault, did you generate any reports?

22 A Yes.

23 Q And what did you generate?

24 A PDCN Form 209.

25 MS. HILLER: I'm going to pass a copy

DISTLER

1 of that over to counsel, which also again
2 was in the discovery package. I am
3 passing a copy up to the hearing officer
4 and ask that it be marked into evidence as
5 Department 19.

6 HEARING OFFICER STUDDERT: Accepted
7 into evidence. Mark it 19, please.

8 (PDCN Form 209 was marked as
9 Department's Exhibit 19 for evidence, as
10 of this date.)

11 MS. HILLER: And I'd ask that
12 Department 19 be shown to the witness.

13 BY MS. HILLER:

14 Q Sergeant, do you recognize what's been
15 passed over to you?

16 A Yes.

17 Q And what is that?

18 A It's a copy of the PDCN 209 that was
19 served upon P.O. DiLeonardo.

20 Q Can you please read the to-wit into the
21 record for us from that form?

22 A Yes. "While off duty, at the time and
23 place of occurrence, P.O. DiLeonardo did violate New
24 York State Penal Law 120.00, Sub 1, assault in the
25 third degree, a misdemeanor. P.O. DiLeonardo did

DISTLER

1 intentionally strike Mr. Moroughan, who was
2 operating a 2010 Toyota Prius, New York Reg.
3 13100TY, with his fist numerous times, causing
4 contusions to Mr. Moroughan's head.

5 "This charge is based upon
6 information and belief, the source of which includes
7 Suffolk County Shooting Incident Reconstruction
8 Report; Suffolk County Police Department crime scene
9 photographs; medical records of Mr. Moroughan;
10 statements of Thomas Moroughan, Kristie Mondo,
11 Jillian Bienz, Sophia Cornia, Eric Klug; and written
12 statements of P.O. Bienz and P.O. DiLeonardo.

13 Q Did that 209 go to the department -- the
14 Disciplinary Review Board?

15 A Yes.

16 Q And as a result of the review by the
17 Disciplinary Review Board, what happened with
18 respect to that charge?

19 A It was converted into a charge, a PDCN 210
20 charge and spec.

21 Q If you know, do you know why the 209 is
22 classified as a misdemeanor and the 210 is a D
23 felony? If you know.

24 A No, I do not know.

25 Q Okay. As a result of your investigation,

DISTLER

1 did you determine that P.O. DiLeonardo violated any
2 additional charges of the rules and regs?

3 A Yes.

4 Q Specifically what other charge did you
5 determine that he was in violation of?

6 A Article 8, Rule 12, Sub 2, the proper
7 safeguarding of equipment.

8 Q And what did you conclude with respect to
9 P.O. DiLeonardo and his equipment?

10 A I concluded that as a result --

11 MR. BARKET: Sorry. Objection to her
12 conclusion. Same objection I've been
13 making.

14 HEARING OFFICER STUDDERT: Overruled.

15 A I concluded that Officer DiLeonardo lost
16 control of his weapon while he was striking Mr.
17 Moroughan in the head, ultimately losing control of
18 it and dropping it in the rear seat, passenger seat.

19 Q And what was that -- did you come to that
20 conclusion as a result of your investigation?

21 A Yes.

22 Q And what did your investigation entail
23 with respect to that particular charge?

24 A A review of the Suffolk County Shooting
25 Incident Reconstruction Report, and the photographs

DISTLER

1 of -- provided to me by the Suffolk County District
2 Attorney's Office, and the statements of Police
3 Officer Bienz and Police Officer DiLeonardo.

4 Q And those are the statements that are in
5 evidence currently?

6 A Yes.

7 Q With respect to those statements, what
8 specifically in the statements led you to believe
9 that he violated this rule and reg?

10 A I need to review.

11 Q Which one do you need to look at?

12 A Officer Bienz's first (perusing).

13 In paragraph 9 of Police Officer
14 Bienz's statement, he speaks about that -- this was
15 when he sees Police Officer DiLeonardo at the side
16 of the cab. He states that he observes him trying
17 to pull Mr. Moroughan out of the vehicle and that he
18 had his gun in his right hand and he was grabbing
19 Mr. Moroughan with his right hand in the upper
20 torso. At this point -- then later on in the
21 statement Police Officer Bienz states that while
22 he's at Huntington Hospital, Anthony DiLeonardo came
23 to his room in the hospital and spoke to him
24 briefly. He told him that the cab driver had tried
25 to run him over and that he had lost his gun in the

DISTLER

1 cab.

2 Q Did you take that statement from Police
3 Officer Bienz?

4 A Yes.

5 Q With respect to Anthony DiLeonardo's
6 statement, was there anything that you also used to
7 base this count on?

8 A I can review it (perusing).

9 Officer DiLeonardo states in his
10 statement that he had a struggle with Mr. Moroughan,
11 and that Mr. Moroughan ripped the gun out of his
12 hand, and he did not know where it went.

13 Q Did Anthony DiLeonardo, with respect to
14 this statement, mention to you what else he did
15 while he had that revolver in his hand?

16 A Yes.

17 Q What else did he do with the revolver in
18 his hand?

19 A He smashed the driver's side window with
20 the butt of his weapon. And as the struggle ensued,
21 he was holding the gun with one hand, and he stated
22 that Mr. Moroughan was punching him about the head
23 with his other hand.

24 Q As a police officer, are you trained to
25 effectuate an arrest by breaking a window with your

DISTRICT

1 revolver?

2 A No.

3 Q With respect to -- okay. I think I'm done
4 with those exhibits.

5 With respect to the Suffolk County
6 Shooting Incident Reconstruction Report --

7 A Yes.

8 Q -- was there anything in that report that
9 you used in your investigation with respect to this
10 charge?

11 A Yes.

12 Q Okay. And what was that?

13 A In the results and conclusions portion,
14 the report stated that during the struggle
15 DiLeonardo will lose possession of his revolver
16 within the taxi, where it will eventually be covered
17 on the left rear passenger floor area.

18 Q And that's on what page of that report?

19 A It's sheet number 6 of 6.

20 Q Was there anything else that you reviewed
21 with respect to your investigation on this count?

22 A Crime scene photographs.

23 Q I am going to pass up a photo. At the top
24 the photo has the number 956 on it. I'm passing up
25 to the hearing officer and ask that it be marked

~~DISTLER~~

1 into evidence, and then passing a copy over to
2 counsel.

3 HEARING OFFICER STUDDERT: Accept
4 that into evidence. Exhibit 20.

5 (Copy of Photograph #956 was marked
6 as Department's Exhibit 20 for evidence,
7 as of this date.)

8 Q Okay, Detective Sergeant. Do you
9 recognize what's been passed over to you and marked
10 as Department No. 20?

11 A Yes.

12 Q And what is it that you have in front of
13 you?

14 A It is a copy of the crime scene photograph
15 depicting a .38-caliber revolver on the rear
16 passenger floor area of the Toyota Prius.

17 Q And have you seen the photo before?

18 A Yes.

19 Q And where did you get that photo?

20 A From Special Investigator Polumbo from the
21 Suffolk County District Attorney's Office.

22 Q And do you know whose weapon that is, as
23 we sit here today?

24 A Yes. It's Police Officer DiLeonardo's.

25 Q Did you reach any conclusions after your

DISTLER

1 investigation with respect to how that weapon got to
2 where it is in that photo?

3 A Yes.

4 Q And what was the that?

5 A I — my conclusion was that during the
6 struggle and the assault where Police Officer
7 DiLeonardo struck Mr. Moroughan with the butt of his
8 weapon, he lost control of his weapon, dropping it
9 in the rear compartment of the taxicab.

10 Q And what is that based on, that
11 information that you just put into the record?

12 A The crime scene — the Suffolk County
13 Shooting Reconstruction — Shooting Incident
14 Reconstruction Report; the crime scene photographs;
15 statements of Officer Bienz and Officer DiLeonardo.

16 Q And all of those things are in evidence,
17 that you relied on?

18 A Yes.

19 MS. HILLER: Sorry. At this time I'm
20 going move in evidence Police Department
21 PDCN 209 with respect to this charge, and
22 ask that it be marked into evidence and
23 returned to the witness. I am also
24 providing counsel with a copy, which again
25 was in the discovery package already

DISTLER

1 exchanged.

2 HEARING OFFICER STUDDERT: Accept
3 that into evidence. Exhibit 21.

4 (PDCN FORM 209 was marked as
5 Department's Exhibit 21 for
6 identification, as of this date.)

7 Q Sergeant Distler, do you recognize what's
8 been passed up to you as Department 21?

9 A Yes.

10 Q Okay. What is that document?

11 A PDCN Form 209, which was served upon
12 Officer Anthony DiLeonardo.

13 Q And can you please read the "to-wit"
14 statement in that document as well?

15 A "P.O. DiLeonardo, while off duty at time
16 and place of occurrence, did fail to safeguard his
17 .38-caliber Smith & Wesson revolver when he dropped
18 it inside of a 2010 Toyota Prius, New York Reg.
19 13100TY, after engaging in a road rage incident."

20 Q With respect to that PDCN 209, did that
21 charge go before the Disciplinary Review Board?

22 A Yes.

23 Q And as a result of the Disciplinary Review
24 Board, what happened with respect to that charge?

25 A It was converted into a PDCN Form 210.

DISTLER

1 Q And did that charge become Charge 11 in
2 the 210, to the best of your knowledge?

3 A To the best of my knowledge. I would have
4 to look at the --

5 MS. HILLER: At this time I'm going
6 have the 210 related to this incident,
7 Case number 8118, passed up to the hearing
8 officer and ask that it be marked for --
9 marked into evidence.

10 HEARING OFFICER STUDDERT: Accept
11 that into evidence. Exhibit 22.

12 (Copy of the 210 was marked as
13 Department's Exhibit 22 for evidence, as
14 of this date.)

15 MR. BARKET: Can I see a copy?

16 MS. HILLER: Counsel has a copy of
17 it. I don't have an extra one. It is in
18 the packet that's been turned over this
19 morning.

20 BY MS. HILLER:

21 Q Sergeant Distler, so you have in your hand
22 what's been marked as Department 22. With respect
23 to the 209 that we just discussed with the "to-wit"
24 that addressed the failure to safeguard the weapon,
25 did that charge make it into the 210?

DISTLER

1 A Yes.

2 Q And what charge is that?

3 A Number 11.

4 Q With respect to the two other 209s that
5 are in evidence, that have been passed up to you,
6 what charges in the 210 do they reflect?

7 A Charge number 4 is the criminal mischief,
8 and Charge number 3 is the assault.

9 Q Thank you. After your investigation did
10 you reach any conclusions with respect to the
11 actions of Anthony DiLeonardo as far as his use of
12 deadly force under the departmental rules and regs?

13 A Yes.

14 Q And what was that?

15 A I determined that Officer DiLeonardo's
16 actions were reckless and unjustifiable under the
17 Article 35. His actions constituted reckless
18 behavior when he shot at a cab with a passenger
19 inside and other bystanders in the area.

20 MR. BARKET: I'm going to object.

21 Her conclusions and opinions are
22 irrelevant.

23 INSPECTOR MICHAEL STUDDERT: Okay.

24 Overruled. I'll give it the weight it's
25 due.

~~...DISTLER~~ DISTLER

1 MS. HILLER: I just have to think one
2 second.

3 So at this time I am done with my
4 direct examination of Sergeant Distler.
5 For the record, the Department feels that
6 we have given the hearing officer
7 substantial evidence with respect to the
8 three counts before the hearing officer,
9 and at this time we would move to amend
10 the charges and specs under Case 8118 to
11 reflect only Counts 3, 4, and 11.

12 INSPECTOR MICHAEL STUDDERT: Okay.
13 What -- are we going to ask some questions
14 here now?

15 MR. BARKET: Do I get to?

16 HEARING OFFICER STUDDERT: Yes.

17 MR. BARKET: Excellent.

18 HEARING OFFICER STUDDERT: Do you
19 want to take a break first or --

20 MR. BARKET: No. I can -- we'll be
21 fine. I can get started.

22 ~~CROSS-EXAMINATION~~

23 BY MR. BARKET:
24
25

DISTLER

1 Q Good afternoon. Let me start with Count
2 11, if I can. The count reads: "Did not properly
3 safeguard his uniform and equipment and other
4 department property issued for or assigned for his
5 use, in that" — do you see that? I'm just curious.
6 What does -- what does that refer to? I mean, would
7 that be -- would that be anything? Any property?
8 Like if he lost his hat?

9 A Assigned property. Hat would be his
10 uniform, would be considered uniform?

11 MS. HILLER: Objection to form. Can
12 you ask specifically what you mean?

13 MR. BARKET: I thought I did.

14 BY MR. BARKET:

15 Q In other words, is it any property that he
16 possesses or -- at the time of the incident, or some
17 it have to be some property that was issued by the
18 Department?

19 A It's property that -- property and
20 equipment that is assigned to him or that he owns.
21 For instance, his .38 revolver off duty is assigned
22 to him as a result of him being a police officer.
23 If he were not a police officer, he would not be
24 allowed to have that.

25 Q Why not?

DISTLER

1 A Because he would need a permit. By the
2 nature of his employment he's entitled to have it.

3 Q So that -- I guess that's what I'm curious
4 about. Is it any property that he owns or just the
5 property the police department issues to him?

6 A It is police department property or
7 property that he would have as a result of his
8 employment as a police officer.

9 Q What would that -- what would that
10 include?

11 A An off duty weapon that he would not have
12 had it not been for his employment.

13 Q How do we know he wouldn't? As a police
14 officer, he has to have a weapon; right? He gets --

15 A Yes.

16 Q Is there a weapon that's issued to police
17 officers of his rank?

18 A Yes.

19 Q Do they get to carry anything they want,
20 or is there a specific weapon that's issued to them?

21 A There's a specific weapon that's issued.

22 Q What kind of weapon is that?

23 A It's a .40 caliber.

24 Q 40-caliber what?

25 A What brand?

DISTLER

1 Q No. What -- well, is it an automatic or a
2 revolver?

3 A Automatic.

4 Q And those are issued to every police
5 officer with Officer DiLeonardo's assignments and
6 rank, by the Department?

7 A Yes.

8 Q And then the officer, the individual
9 officers, they have the ability and the right,
10 actually, to purchase other weapons if they so
11 choose; yes?

12 A Yes.

13 Q So they you could purchase rifles, other
14 pistols, other firearms. Is that right?

15 A Yes.

16 Q And so the .38-caliber Smith & Wesson,
17 that wasn't something that the Department required
18 him to own, was it?

19 A No.

20 Q It wasn't something that was issued to him
21 as part of his position as a police officer, was it?

22 A Not issued to him.

23 Q He chose to purchase the weapon, I
24 suppose, privately?

25 A I suppose.

DISTLER

1 Q And his purchase of the weapon was a
2 voluntary act on his part. Is that right?

3 A I suppose it would be, yes.

4 Q And it was — that decision is unrelated
5 to his function as a police officer.

6 A Again, I think I stated earlier he would
7 not be able to have that weapon without a permit,
8 and by the nature of his employment as a police
9 officer, he is entitled to carry the weapon.

10 Q Well, he is entitled to carry — he's
11 entitled to purchase the weapon and carry it, by the
12 constitution; right? He has a right to bear arms.
13 He just would have to apply for a permit.

14 A Correct.

15 Q Okay.

16 A In New York State.

17 Q In New York State. So it's not issued to
18 him through the Department. He just is able to
19 carry it legally because he's a police officer.

20 A Correct.

21 MR. SANTIAGO: Actually, may I
22 interject? You're not able to charge him
23 criminally for his possession of the
24 handgun. He's exempt. Provision 265 —

25 MR. BARKET: Okay.

DISTLER

1 BY MR. BARKET:

2 Q Okay. So the property wasn't issued or
3 assigned for his use by the Department, was it?

4 A It was not issued by the Department.

5 Q Or assigned to him.

6 A Not assigned to him.

7 Q Let me roll back to kind of the beginning
8 of this. Were you -- I guess you were assigned to
9 this investigation?

10 A Yes.

11 Q How did the complaint --

12 HEARING OFFICER STUDDERT: Sergeant,
13 can you just direct your responses to me
14 so I can --

15 THE WITNESS: Sure.

16 BY MR. BARKET:

17 Q How did the complaint come in to the
18 Internal Affairs -- is it Unit?

19 A Yes.

20 Q How did it come in to the Internal Affairs
21 Unit?

22 A On June 6th we were directed by Acting
23 Police Commissioner Krumpert to generate an
24 investigation into the incident involving the
25 shooting with Police Officer DiLeonardo.

DISTLER

1 Q Okay. Is that the same individual who is
2 now the police commissioner or acting police
3 commissioner?

4 A Yes.

5 Q Was he the acting commissioner then or the
6 first deputy?

7 A He was the acting police commissioner.

8 Q And did he give you any -- any specific
9 orders with respect to that?

10 A No.

11 Q Was it a written assignment?

12 A No. It was an oral assignment that was
13 given to the deputy inspector of our unit at the
14 time, which was Edward Dordon. And we generate what
15 we call a blue team complaint so it gets put into
16 the computer.

17 Q Okay. Anybody working this with you?

18 A Yes.

19 Q Who was that?

20 A Multiple -- multiple people in my unit,
21 but specifically Detective Lieutenant Ralph Hoffman
22 and myself were assigned the investigation.

23 Q Who was in charge of the investigation?

24 A Ultimately, Inspector Neil Deloggi, the
25 commanding officer.

DISTLER

1 Q You indicated you'd been with IAU now for
2 three and a half years. Is that right?

3 A Yes.

4 Q When did you start there?

5 A I started in September or, I believe,
6 October of 2010.

7 Q Okay. And this incident took place in
8 February of 2011?

9 A Yes.

10 Q So you had been at that particular
11 assignment for about four months at the time that
12 the incident took place?

13 A A little bit more, because, again, I
14 didn't receive the investigation until June; so
15 about eight months.

16 Q All right. And then once you began the
17 investigation, did you interview witnesses
18 personally?

19 A Yes.

20 Q By the way, one of the witnesses that you
21 interviewed was Officer Bienz. Is that right?

22 A Yes.

23 Q What time did that interview take place?

24 A 1900 hours, in or abouts.

25 Q What time did it end?

DISTLER

1 A Officer Bienz. I want to say it was about
2 2:00 a.m.

3 Q What is your normal shift?

4 A My normal shift?

5 MS. HILLER: Objection.

6 INSPECTOR MICHAEL STUDDERT: What
7 grounds?

8 MS. HILLER: It's completely
9 irrelevant to the charges that are before
10 the officer -- Jo-Ann's normal hours.

11 MR. BARKET: I think that -- well,
12 can I be heard outside of the witness? I
13 think it's actually directly relevant.

14 (Witness leaves the hearing room.)

15 MR. BARKET: In this particular case,
16 I at least know for my client, because we
17 represented him during the process, the
18 interview was ordered to take place at
19 night over the course of literally
20 overnight. So from 5:00 or 6:00 in the
21 evening until 5:00 or 6:00 in the morning.
22 So Officer Dileonardo was up for an
23 extended period of time, as well as,
24 frankly, the lawyer in my office who
25 accompanied him to the interview.

DISTLER

1 I think it's relevant because it goes
2 to literally the voluntariness of the
3 statements that are done. It seems to be
4 the practice in Internal Affairs to
5 specifically interview the officers
6 they've targeted for discipline in the
7 middle of the night to deprive them of
8 sleep and, in Officer DiLeonardo's case,
9 food, to force them to give statements and
10 to, if you will, alter their account in
11 order to end the interviewing process.

12 And I intend to ask the internal
13 affairs officer whether or not she
14 interviewed other witnesses in a similar
15 fashion. If this is just part of "I was
16 assigned, you know, I was working nights
17 that night so I did it 5:00 to 2:00 and
18 that's when he came in," that's one thing.
19 If what she did is specifically try to
20 bring people in on overnight in order
21 to -- officers in on overnight to do this,
22 I think that's relevant.

23 MS. HILLER: With respect to the
24 voluntariness of the statements, we don't
25 have the -- we don't have the burden of

~~DISTLER~~

1 proving voluntariness of any statements
2 that were made to IAU for current members.

3 MR. BARKET: You have the burden of
4 proving that they're not coercive. There
5 is no -- there's no adjudication or
6 adjudicative board, in this country,
7 anyway, that would permit the use of
8 involuntary statements, statements that
9 are the product of classic coercion. And
10 keeping somebody up extended hours,
11 depriving them of food, when you do that
12 on purpose certainly rings of classic
13 coercion.

14 MS. HILLER: And I would object to
15 interjecting voluntariness into our
16 standard of proof at this hearing.

17 HEARING OFFICER STUDDERT: Okay. I
18 am just going to take a few minutes to
19 make a decision on this, and we'll
20 reconvene in about five minutes. Okay?

21 (Whereupon, a brief recess was
22 taken.)

23 INSPECTOR MICHAEL STUDDERT: Okay.
24 Back on the record. I'm going to allow
25 that -- you to question her regarding her

DISTLER

1 tour of duty.

2 MR. BARKET: Okay.

3 HEARING OFFICER STUDDERT: Just as
4 we're starting, we want to agree that
5 we'll end around 4:00 so I don't interrupt
6 your questioning.

7 MR. BARKET: I scheduled something
8 for 4:00 in my office, so figuring 3:30
9 was going to be it, but I'll find a good
10 spot to stop, if that's okay.

11 HEARING OFFICER STUDDERT: That is
12 fine.

13 MS. HILLER: And then presumably
14 we'll start back at 10:00 tomorrow?

15 HEARING OFFICER STUDDERT: 10:00
16 tomorrow.

17 MS. HILLER: I'll let you address
18 that.

19 BY MR. BARKET:

20 Q So, what is your normal tour of duty?

21 A We work two shifts --

22 HEARING OFFICER STUDDERT: Hold on.
23 Just -- you're still under oath, Sergeant.

24 THE WITNESS: Yes. Okay.

25 We work two shifts, either 8:00 a.m.

DISTLER

1 to 6:00 p.m. or 12:00 noon to 10:00 p.m.

2 BY MR. BARKET:

3 Q Okay. What shift were you working on the
4 day you interviewed Officer Bienz?

5 A I believe I was working the 12:00 noon to
6 the 10:00 p.m. shift.

7 Q Okay. How about when you interviewed
8 Officer DiLeonardo?

9 A I believe I was working the 12:00 noon to
10 10:00 p.m. shift.

11 Q With respect to the witnesses that you
12 interviewed, you prepared a report of the entire
13 internal investigation; is that right?

14 A I'm not certain what you're asking me.

15 Q So you interviewed a number of witnesses,
16 more than just the witnesses that were on detail
17 today; is that right?

18 A Yes.

19 Q And you prepared a report based on that;
20 yes?

21 A Yes.

22 Q Several hundred pages?

23 A Yes.

24 Q Now, you indicated that you took into
25 account a 50-B testimony from Mr. Moroughan; is that

DISTLER

1 right?

2 A Correct.

3 Q What is a 50-H -- what is 50-H testimony?

4 A It's a deposition.

5 Q For what purpose?

6 MS. HILLER: Objection.

7 HEARING OFFICER STUDDERT: On what
8 ground?

9 MS. HILLER: I'm not sure that the --
10 well, objection as to Sergeant Distler
11 explaining what a 50-H hearing is for
12 purposes of this particular hearing. She
13 did testify that she reviewed testimony of
14 Thomas Moroughan. My position is that
15 would be enough. She reviewed sworn
16 testimony. She doesn't have to explain
17 under the circumstances of which that
18 testimony was taken.

19 HEARING OFFICER STUDDERT: I'm going
20 to allow it.

21 A To the best of my knowledge, a 50-H
22 hearing is a deposition that an attorney requests as
23 part of his preparation for his case.

24 Q As part of your responsibilities here, you
25 had to make some credibility evaluations, didn't

DISTLER

1 you?

2 A Yes.

3 Q And is that part of what you did; yes?

4 A Yes.

5 Q So, it's not just that -- you didn't just
6 accept what Mr. Moroughan had to say. You made some
7 assessment of his account; yes?

8 A Yes.

9 Q By the way, did you ask Mr. Moroughan to
10 be interviewed by you?

11 A Yes.

12 Q And did you end up speaking to him?

13 A No.

14 Q Why not?

15 A His attorney would not allow him to be
16 interviewed.

17 Q Did you make one request? More than one
18 request?

19 A More than one request.

20 Q And they repeatedly refused?

21 A Yes.

22 Q Mr. Moroughan did, however, speak to -- I
23 guess, in this deposition? Is that right?

24 A Yes.

25 Q Were you aware that Mr. Moroughan sued

DISTLER

1 Nassau County?

2 A Yes.

3 Q Were you aware that he -- prior to suing,
4 he filed what's called a notice of claim?

5 A Yes.

6 Q Are you aware that when such a notice is
7 filed, the County has the right to examine the
8 person who's intending to sue the County, under
9 oath?

10 A I'm not sure if I knew that as a fact.

11 Q Well, would it matter to you at all if you
12 knew that Thomas Moroughan's testimony was part of a
13 lawsuit that he had commenced in an effort for him
14 to acquire several million dollars from Nassau and
15 or Suffolk County?

16 A Would it matter to me?

17 Q Sure.

18 A Sworn testimony, I would --

19 Q Well, you wouldn't take into account the
20 motive and the bias the individual would have in
21 giving testimony?

22 A Yes, I would.

23 Q Okay. So in this instance, if Mr.
24 Moroughan had brought a lawsuit against the County
25 and he was seeking to recover literally several

~~DISTRICT~~

1 million dollars, and a required part of that lawsuit
2 was that he give testimony under oath in a
3 deposition, would those facts influence -- or would
4 you take into account those facts when assessing his
5 credibility?

6 MS. HILLER: Objection to form. I'm
7 not really sure what your question is.
8 You lost me after two sentences.

9 BY MR. BARKET:

10 Q Well, it may be more convolutedly stated,
11 but the fact that the guy is trying to get million
12 dollars out of the County, does that affect your
13 view of his credibility?

14 A There were multiple statements made by
15 Mr. Moroughan. Some were prior to his lawsuit.

16 Q I'm not asking you about the prior ones.
17 I'm asking you about the 50-B testimony that you --

18 A I took everything into consideration.

19 Q Well, you didn't take that into
20 consideration, because you didn't even know that
21 that's what the testimony was from. Is that right?

22 A I'm not sure what you're saying.

23 Q In other words, the 50-B testimony that
24 you've said you relied upon and you read into the
25 record, until you and I spoke you didn't know that

DISTLER

1 that was part of his lawsuit where he was trying to
2 get 50 -- or several million dollars from the County
3 of Nassau and the County of Suffolk.

4 A I knew that there was a lawsuit. I knew
5 that he was -- he was deposed in a statement. I did
6 not know that they were connected, that he was
7 obligated to testify at the 50-R hearing as a result
8 of that, but I did take everything into
9 consideration. Absolutely.

10 Q Well, did it raise any concerns on your
11 part that Mr. Moroughan was willing to speak at a
12 deposition where at stake was, you know, millions of
13 dollars in his pocket or not, but refused to speak
14 to you?

15 A No.

16 Q That doesn't matter to you at all?

17 A No.

18 Q Have you ever known anybody to lie under
19 oath?

20 MS. HILLER: Objection. I don't see
21 how this goes to the charges and specs
22 which are before this court right now with
23 respect to Anthony DiLeonardo.

24 MR. BARKET: I have to -- if I can't
25 have the witness --

DISTLER

1 HEARING OFFICER STUDDERT: Sustained.

2 I've heard enough regarding Mr.
3 Moroughan's testimony and whether -- his
4 credibility, where I can, you know --

5 MR. BARKET: Inspector, I would
6 respectfully suggest that if we're going
7 to allow the witness to offer her opinion,
8 especially over my objection, and we're
9 going to allow the witness to offer the
10 opinion based upon a portion of sworn
11 testimony, I -- just as a matter of
12 fundamental fairness I ought to be able to
13 inquire about the veracity of the
14 underlying statements.

15 HEARING OFFICER STUDDERT: You've
16 made your point, and it's on the record,
17 so let's move on to the next question.

18 BY MR. BARKET:

19 Q Mr. Moroughan, in another statement to
20 police officers the night of the incident, confessed
21 to trying to run over Officer DiLeonardo. Is that
22 right?

23 A I don't know if I would use the word
24 "confessed." He made some statements.

25 Q Well, let's take a look at what he said,

DISTLER

1 precisely.

2 HEARING OFFICER STUDDERT: Is there
3 an exhibit number you have?

4 MR. BARKET: Yeah, I do. Just give
5 me one second, Judge. Sorry.

6 Should I call you Judge or Inspector?

7 HEARING OFFICER STUDDERT: Inspector
8 is fine. Thank you.

9 MR. BARKET: It's 10.

10 Sorry. I might have slipped and
11 called you Judge. Habit.

12 BY MR. BARKET:

13 Q So, 10 is the statement that was taken by,
14 I guess, two Suffolk County detectives; is that
15 right?

16 A Yes.

17 Q And I say "confession" because it's in the
18 form of a statement that's given to individuals who
19 are under arrest. The rights are at the beginning;
20 correct?

21 A Correct.

22 Q So it indicates that he was given the
23 right to remain silent and so forth; yes?

24 A Correct.

25 Q In this he says, among other things, that

DISTLER

1 he pulled up next to -- excuse me. On a quote from
2 page 2: "I drove west on 19th Street, then north on
3 Oakwood Road. I saw the two cars parked on the side
4 of Oakwood Drive at Tippen. I rolled down my
5 passenger window and pulled next to the white
6 Infiniti. I yelled to the guy who was in his
7 mid-twenties and white, 'Why don't you learn to
8 drive'" -- and I'm quoting him, of course -- "you
9 fucking asshole."

10 That's part of what he told the
11 police on, I guess, the day of the incident,
12 February 27, 2011? Is that right?

13 A Correct.

14 Q And so by his own words he indicated that
15 the -- Officer DiLeonardo and Officer Bienz weren't
16 doing anything to him at that point in time; were
17 they?

18 A Correct.

19 Q That he decided to initiate some
20 confrontation in this case, and that with Officer
21 DiLeonardo; right?

22 A Absolutely.

23 Q And he was driving in a car; yes?

24 A Mr. Moroughan?

25 Q Yes.

DISTLER

1 A Yes.

2 Q He stopped? Yes?

3 A Yes.

4 Q Specifically rolled down his window -- his
5 passenger window?

6 A Yes.

7 Q And then began cursing at Officer
8 DiLeonardo.

9 A Yes.

10 HEARING OFFICER STUDDERT: Sergeant,
11 just again, direct your responses to me.
12 Thank you.

13 THE WITNESS: Okay.

14 BY MR. BARKET:

15 Q A little bit later in the statement it
16 says he got back in his car and backed it up. "I
17 continued yelling at the guy in the white car, and
18 he yelled back at me. The guy in the white car
19 started walking towards my car, and I revved my
20 engine. I drove forward toward the guy who was
21 standing in street near his white car. I then saw
22 the guy fire about three or four shots at my car,
23 and I felt I was hit. I felt he fired at me to
24 protect himself because I drove at him."

25 That's what Mr. Moroughan told two

DISTLER

1 Suffolk County detectives a few hours after this
2 incident took place. Is that right?

3 A Yes.

4 Q That, too, was under oath, wasn't it?

5 A Yes.

6 Q Did you interview the two detectives who
7 took this statement?

8 A Personally, no. They were interviewed by
9 Suffolk County Internal Affairs. That's how we work
10 it.

11 Q And they conveyed to you the results of
12 those interviews?

13 A Yes.

14 Q That's in your overall report here?

15 A Yes, it is.

16 Q Okay. We'll come back to this later, but
17 for now, the Toyota Prius that people seem to think
18 can't rev its engine, you said something that the
19 report said that, without a quote, a significant
20 delay. The engine obviously can rev. It just takes
21 time. Is that right?

22 A Yes.

23 Q Okay. How much time?

24 MS. HILLER: Objection. You objected
25 earlier to her not being an expert, so if

DISTLER

1 you want to read from the document, I

2 would not have a problem, but --

3 MR. BARKET: She said she went out
4 and did things. She went out to Hempstead
5 Toyota or something. I'm curious about
6 her basis of knowledge.

7 HEARING OFFICER STUDDERT: I'll allow
8 it.

9 BY MR. BARKET:

10 Q How much time?

11 A It took about six to ten seconds before
12 you would be -- the electric engine would convert
13 over to the gasoline engine.

14 Q After it started?

15 A After you revved it.

16 Q After you push on the gas.

17 A Yes.

18 Q So, what happens if you went in reverse
19 and then shifted into drive quickly --

20 MS. HILLER: Objection.

21 Q -- and it was about six or ten seconds
22 between when you went in reverse until you went in
23 drive? Would the engine rev then?

24 MS. HILLER: Objection. It calls for
25 speculation.

DISTLER

1 HEARING OFFICER STUDDERT: Okay.

2 Sustained.

3 BY MR. BARKET:

4 Q Did you consider that possibility? When
5 you were at the Hempstead Toyota, did you have them
6 back the car up and move it forward?

7 A Yes, we did.

8 Q And did you hear the engine rev?

9 A The engine revved once the car was stopped
10 and it was put into drive from — you go in reverse,
11 stop it, put it into drive. It took about a six- to
12 ten-second delay.

13 Q Well, what if the person just flipped it
14 into drive? Did you do that?

15 A Yes, we did.

16 Q Did you hear Mr. Moroughan say that he had
17 trouble with his car because he wasn't used to it?

18 A That was in his statement.

19 Q And did you hear his girlfriend say that
20 she wasn't sure what he was doing, that he was
21 trying to put it in reverse or drive; he was having
22 trouble with it?

23 A Yes.

24 Q And he was trying to drive the car at the
25 time? He was trying to move it, wasn't he?

DILSTLER

1 A Yes.

2 Q Okay. And the car was running, obviously,

3 this entire time. He didn't turn it off.

4 A Yes.

5 Q And Mr. Moroughan actually said he revved

6 his engine.

7 A Yes, he did.

8 Q I think everybody at the scene said that

9 the engine revved? Yes?

10 A No.

11 Q Except Officer Bienz said he didn't hear

12 it?

13 A Correct.

14 Q He just heard the screeching of the tires.

15 A Correct.

16 Q Indicating the car had been moved and

17 stopped suddenly.

18 A Correct.

19 Q Okay. Officer DiLeonardo said he heard

20 the engine rev?

21 A He did not say he heard the engine rev.

22 Q How about his companion that night,

23 Sophia?

24 A Yes, I believe she did say she heard the

25 engine rev.

DISTLER

1 Q And that was part of what was in the
2 Deadly Force Response Team Incident Report; yes?

3 A What was in --

4 Q That the engine was revved just before the
5 car was driven at Officer DiLeonardo.

6 A I would need to review that.

7 HEARING OFFICER STUDDERT: What
8 exhibit number is that?

9 MR. BARKET: Sure. It's 1.

10 HEARING OFFICER STUDDERT: Exhibit 1?

11 BY MR. BARKET:

12 Q Paragraph 6, the first sentence there?

13 A Yes.

14 Q You said you accepted the number of
15 several thousand dollars for the damage to the
16 vehicle?

17 A Yes.

18 Q Did you look at any bills or insurance
19 documents or auto repair shop --

20 A No.

21 Q -- auto repair slips?

22 A No.

23 Q The damage to the vehicle, as I understand
24 it, was damage to the windshield, the front driver's
25 side window?

DISTLER

1 A Yes.

2 Q And a hole in the upholstery?

3 A Correct.

4 Q Does that strike you as several thousand
5 dollars' worth of damage?

6 A I'm basing it on what the owner of the cab
7 company told me.

8 Q That's it?

9 A Correct.

10 Q And you're not saying that mere damage
11 itself constitutes the crime; right? It's the
12 damage without the justification.

13 MS. HILLER: Objection.

14 BY MR. BARKET:

15 Q Do you understand what I'm saying?

16 I'll rephrase it. In other words,
17 you're not saying that just because Officer
18 DiLeonardo fired his gun at the car and damaged it,
19 that therefore he committed a crime, are you?

20 A I'm not quite sure — clear on what you're
21 asking me.

22 Q Sure. Isn't part of your conclusion,
23 inherent in it, that he was not justified in firing
24 a gun?

25 MS. HILLER: Objection.

DISTHER

1 BY MR. BARKET:

2 Q If he's trying to defend himself, he had a
3 right to do so, didn't he?

4 MS. HILLER: Objection. This is with
5 respect to the criminal mischief count?

6 MR. BARKET: Yeah.

7 MS. HILLER: I'm objecting.

8 HEARING OFFICER STUDDERT: On what
9 ground?

10 MS. HILLER: Because the charge is
11 unlawful conduct. Article 5, Rule 2, Sub
12 1 says conduct that would constitute
13 criminal mischief. Justification has
14 nothing to do with criminal mischief.

15 MR. BARKET: I'm sure the Department
16 is not seriously arguing that an officer
17 doesn't have the right to fire at a
18 vehicle, because it might damage it,
19 although his intent, purpose, and
20 reasonable belief is to save his life.

21 HEARING OFFICER STUDDERT: I'm going
22 to sustain the objection. Next question.

23 MR. BARKET: And I'm not arguing with
24 you, Inspector. I just want to be clear
25 what the Department's position is. The

DISTLER

1 Department's position is that it's
2 irrelevant as to whether or not Officer
3 DiLeonardo was acting to save his life.
4 The fact is, they think they've sustained
5 the charge because he damaged the vehicle?

6 MS. HILLER: Objection again.

7 MR. BARKET: I'm not asking the
8 witness this. I'm curious as to the
9 Department's position. I just don't
10 understand it.

11 MS. HILLER: I'm not sure --

12 MR. BARKET: I mean, are we really
13 saying that the -- the officer doesn't
14 have the right to damage the vehicle in
15 order to save his life?

16 MS. HILLER: We did not say that.
17 That is not in the record.

18 MR. BARKET: Okay. So, if he --

19 MR. SANTIAGO: It seems you are
20 enunciating a legal maxim, right. Is an
21 officer, even though he discharges a
22 weapon justified, cannot be charged
23 independently with criminal mischief,
24 damaging property recklessly. As those
25 issues come before us in civil litigation,

DISTLER

1 which is a remedy outside the criminal
2 realm, but it's been dealt with in that
3 realm, in that forum. That is possible.
4 Why would it not be possible?

5 MR. BARKET: Well, of course.

6 MR. SANTIAGO: Our officers act many
7 times from justification or in furtherance
8 of the duties and damage property, and may
9 I say could a third party bring criminal
10 charges against him? It could happen. It
11 doesn't happen. I mean, usually, you
12 repair it civilly. That's the remedy that
13 we approach the person who is wronged, the
14 property or with that type of remedy. But
15 to say it could not happen is wrong. Do
16 you understand what I'm saying?

17 MR. BARKET: No, I -- I -- I do. I
18 think my position is that Officer
19 DiLeonardo was justified in firing at the
20 vehicle, at the occupant of the vehicle,
21 because he was -- his life was in danger.
22 The Department seems to object to that,
23 saying his life is in danger is an
24 irrelevant thing, because he's charged
25 here with criminal mischief and not

DISTLER

1 shooting at the individual.

2 MS. HILLER: Well, you didn't ask the
3 question with respect to was his life in
4 danger. You asked -- actually, if you
5 want to repeat the question back, that
6 would be fine, because I want to make sure
7 I'm clear on this.

8 MR. BARKET: Okay.

9 MS. HILLER: But I --

10 MR. BARKET: Okay. Let me rephrase
11 it. Maybe it was confusing.

12 BY MR. BARKET:

13 Q As part of your analysis of the criminal
14 mischief, did you consider whether or not Officer
15 DiLeonardo's life was in danger at that point in
16 time?

17 A Yes.

18 Q And did you consider whether or not
19 Mr. Moroughan was doing as he said he was, driving
20 his vehicle towards Officer DiLeonardo?

21 A Yes.

22 Q You indicated, before, that there was
23 no -- there was no training that's issued or
24 direct -- no training given for an officer to break
25 a side window of a car in order to effectuate an

DISTLER

1 arrest. Do you remember that testimony?

2 A Yes.

3 Q Is there anything that prohibits that?

4 A No.

5 Q If the arrest is lawful and the person is
6 refusing to comply, the officer has the right, in
7 fact the obligation, to apprehend the suspect,
8 doesn't he?

9 A Correct.

10 Q A person's not allowed to lock their car
11 and say, like, I'm on home base; you can't get in.

12 A No. If it's a lawful arrest, and it's
13 reasonable to assume that that's what needs to be
14 done, yes.

15 Q So in this instance the — if I can,
16 the — whether or not that change is sustained turns
17 not only on whether he broke the window, but whether
18 or not it was a lawful arrest that he was
19 effectuating.

20 A Correct.

21 MR. BARKET: Inspector, this is a
22 fine time for me to break, if it's okay
23 with you.

24 HEARING OFFICER STUDDERT: We will
25 reconvene tomorrow at 10:00 o'clock.

DISTLER

1 MR. BARKET: In terms -- in terms of
2 scheduling tomorrow, I have an appearance
3 in federal court at 1:00, which means I
4 have to leave the area around 12:00, maybe
5 a little bit before, to get something to
6 eat.

7 HEARING OFFICER STUDDERT: Do you
8 want to make it a little earlier, 9:00,
9 and work until about 12:00?

10 MS. HILLER: 9:30 would be better for
11 me.

12 MR. BARKET: 9:30 would be fine.

13 HEARING OFFICER STUDDERT: 9:30 work
14 for everyone?

15 MS. HILLER: Sure.

16 HEARING OFFICER STUDDERT: Okay. And
17 we'll go until about 12:00.

18 MS. HILLER: Can I -- actually one
19 other question. It can go on the record.
20 With respect to witnesses for tomorrow.

21 MR. BARKET: I don't have any.

22 MS. HILLER: Okay.

23 MR. BARKET: I don't think we'd get
24 to any.

25 MS. HILLER: Okay. Just checking.

DISTLER

You don't want me to call any of our
departmental members that were on your
list?

MR. SANTIAGO: Yes, Sergeant
Maranese, but notify him he won't be
coming in tomorrow — I'm sorry. I wanted
to clarify if you are going to be calling
any witnesses tomorrow afternoon?

I believe that Maranese was here --
Sergeant Maranese. I'm asking if you need
him tomorrow, we can notify him.

MR. BARKET: I doubt that.

MR. SANTIAGO: Okay.

- o0o -

(Whereupon, the examination of JO-ANN
DISTLER was concluded at 3:45 p.m.)

JO-ANN DISTLER

Subscribed and sworn to before me
this ____ day of _____, 20__.

NOTARY PUBLIC

DISTLER

INDEX

OPENING STATEMENTS

MS. HILLER	17 - 25
MR. BARKET	26 - 32

EXAMINATION OF SERGEANT JO-ANN DISTLER

DIRECT EXAMINATION BY MS. HILLER	33 - 137
CROSS-EXAMINATION BY MR. BARKET	137 - 169

DEPARTMENT'S EXHIBITS

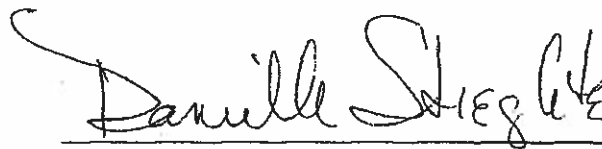
1	Deadly Force Response Report	36
2	Copy of Photograph #870	47
3	Copy of Photograph #846	47
4	Copy of Photograph #966	47
5	Copy of Photograph #964	47
6	Shooting Incident Report	50
7	Anthony DiLeonardo's Statement	54
8	PDCN Form 206	54
9	Jillian Bienz's Statement	54
10	Thomas Moroughan's Statement	54
11	Kristie Mondo's Statement	54
12	Eric Klug's Statement	54
13	Edward Bienz's Statement	54

DISTLER

1	14	Suffolk County 50-B hearing	55
2	15	Nassau County 50-B hearing	55
3	16	Sophia Cornia's Statement	107
4	17	PDCN Form 209	118
5	18	Huntington Hospital Report	123
6	19	PDCN Form 209	126
7	20	Copy of Photograph #956	132
8	21	PDCN Form 209	134
9	22	Copy of 210	135
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
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CERTIFICATE BY COURT REPORTER

I, Danielle Stieglitz, a Certified, Professional Court Reporter and Notary Public in and for the State of New York do hereby certify that the foregoing testimony taken in the matter of NASSAU COUNTY POLICE DEPARTMENT against ANTHONY DILEONARDO, consisting of page 1 through 174 is an accurate transcription of my cryptic notes.
IN WITNESS WHEREOF, I SET MY HAND THIS DAY.



Danielle Stieglitz

CERTIFIED COURT REPORTER

NORTH SHORE COURT REPORTERS

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\$	134 [1] 1738	29 [1] 623
\$1 500 [3] 198 23/25 1196	135 [1] 1739	29b [1] 104/12
	137 [2] 1728 1729	2-00 [2] 80/12 146/17
	14 [4] 555 58/24 99/16 173/1	2-00 a.m. [1] 145/2
	143 [2] 79/25 83/3	3
11 [2] 79/9 122/12	145-10 [1] 118/23	30 [2] 58/15 62/6
'adder [1] 105/11	145.10 [1] 19/19	31 [1] 62/15
'cause [1] 122/15	1490 [2] 1/8 2/7	32 [2] 62/21 172/5
'Dude [1] 97/14	15 [9] 6/8 55/8 55/12 56/4 59/2 84/17 95/15	33 [2] 62/24 172/8
'five' [1] 105/10	100/5 173/2	34 [1] 63/3
'Fuck [1] 64/23	16 [6] 59/6 100/8 108/2 108/5 108/9 173/3	3466 [2] 37/17 89/25
'Get [3] 102/17 102/21 103/18	164 [1] 33/14	35 [3] 38/6 63/9 136/17
7 [1] 94/11	169 [1] 172/9	36 [2] 63/16 172/13
Tue [1] 61/13	17 [11] 7/7 53/14 56/15 59/13 100/12 118/5	3632 [4] 37/15 56/19 101/2 104/7
'Kind [1] 98/2	118/7 118/9 118/13 172/4 173/4	37 [1] 63/20
'Leave [1] 103/2	174 [1] 174/6	38 [1] 63/23
'Police [1] 64/5	170a [1] 79/21	39 [1] 64/3
'Stop [1] 62/18	18 [6] 59/20 123/7 123/10 124/7 124/10	3-30 [1] 148/8
'Ten [1] 66/5	173/5	3-45 [1] 171/16
'Where [1] 66/10	19 [6] 59/23 126/5 126/7 126/9 126/12 173/6	3A [1] 152/3
'Why [2] 81/8 157/7	1900 [1] 144/24	4
'You [1] 60/15	1984 [1] 79/22	40 [2] 58/15 64/9
'You're [2] 55/21 103/19	1986 [2] 74/16 86/16	40-caliber [1] 139/24
	190a [10] 39/11 39/12 79/23 79/25 81/2 83/4	41 [1] 64/13
	83/8 84/5 92/16 157/2	42 [1] 64/16
x [2] 1/1 1/6	1-00 [4] 83/8 87/6 92/6 170/3	422 [3] 86/17 89/6 89/15
	1-10 [1] 80/2	43 [1] 64/20
	1-15 [2] 22/3 80/3	44 [1] 64/25
38 [14] 18/10 19/12 20/10 22/13 23/2 23/6	1-45 [1] 101/10	45 [1] 65/6
24/15 24/21 40/3 40/10 132/15 134/17	2	46 [1] 65/8
138/21 140/16	2/27 [4] 71/1 79/9 82/24 122/12	47 [5] 65/10 172/14 172/15 172/16 172/17
38-caliber [3] 18/10 19/12 20/10 22/13	20 [8] 60/2 63/24 95/15 132/4 132/6 132/10	48 [1] 65/13
24/15 132/15 134/17 140/16	171/22 173/7	49 [1] 65/16
40 [1] 139/23	2001 [1] 19/2	4-00 [2] 149/5 149/8
0	2010 [9] 19/8 20/12 51/2 56/19 113/17 119/1	5
0115 [6] 18/5 19/3 20/1 37/5 38/9 71/1	127/2 134/18 144/6	51/87 [1] 108/15
0700 [1] 79/10	2011 [32] 18/4 20/1 21/15 22/2 22/17 34/24	50 [7] 37/6 39/8 63/14 65/19 121/20 154/2
080 [1] 3/6	36/21 37/2 45/12 51/4 57/6 57/22 70/22 71/1	172/18
1	74/32 77/21 79/13 80/2 82/24 86/10 87/6	50-H [18] 54/2 55/3 55/6 100/23 104/3
10 [14] 1/10 54/17 58/7 84/17 93/17 97/3	89/25 90/11 90/20 90/25 101/10 104/12	104/13 121/21 122/5 149/25 150/3 150/3
101/3 101/6 104/8 104/11 118/23 156/9	110/24 114/24 117/1 144/8 157/12	150/11 150/21 153/17 153/23 154/7 173/1
156/13 172/22	2012 [10] 3/7 6/8 7/7 20/20 20/23 49/21	173/2
100 [1] 101/12	53/14 54/1 56/16 89/21	51 [1] 65/25
107 [1] 173/3	2014 [1] 1/10	52 [1] 66/3
10-00 [7] 91/8 143/14 148/15 149/1 149/6	206 [3] 53/16 54/10 172/20	53 [1] 66/16
149/10 169/25	206A [2] 7/1 70/19	54 [8] 66/18 172/19 172/20 172/21 172/22
10-15 [1] 1/11	209 [22] 6/18 43/11 117/10 117/16 118/6	172/23 172/24 172/25
11 [11] 3/18 9/10 19/25 54/20 58/14 97/22	118/16 118/20 119/15 122/14 125/24 126/8	55 [3] 66/20 173/1 173/2
135/1 136/3 137/11 138/2 172/23	126/18 127/13 127/21 133/21 134/4 134/11	56 [1] 66/23
11-95045 [1] 78/2	134/20 135/23 173/4 173/6 173/8	57 [1] 67/3
110 [1] 92/9	200a [2] 119/22 136/4	58 [1] 67/8
11501 [2] 1/9 2/8	200b [1] 101/9	59 [1] 67/14
11530 [1] 2/16	21 [6] 60/5 74/16 134/3 134/5 134/8 173/8	5906 [1] 86/22
118 [1] 173/4	210 [12] 6/21 120/3 120/9 127/19 127/22	5-00 [3] 145/20 145/21 149/17
12 [9] 20/16 21/25 24/13 25/12 54/23 58/20	134/25 135/2 135/6 135/12 135/25 136/6	6
98/9 128/6 172/24	173/9	60 [1] 67/17
12-080 [1] 3/6	210.45 [1] 87/4	61 [1] 67/21
120.00 [1] 126/24	22 [6] 20/20 60/13 135/11 135/13 135/22	62 [1] 68/2
120.05 [1] 18/21	173/9	63 [1] 68/5
123 [1] 173/5	23 [5] 3/6 60/18 83/2 108/14 108/15	631-522-5906 [1] 86/22
126 [1] 173/6	23rd [1] 79/24	6384 [1] 33/17
12-00 [6] 149/1 149/5 149/9 170/4 170/9	24 [2] 61/1 74/15	64 [1] 68/8
170/17	25 [4] 61/4 63/24 86/15 172/4	65 [1] 68/11
12-15 [1] 108/25	250a [1] 90/11	66 [2] 68/16 101/16
12-30 [1] 108/25	26 [5] 57/6 61/12 90/20 90/25 172/5	666 [2] 21/4 4/18
12-44 [1] 104/12	265 [1] 141/24	67 [1] 68/21
12-45 [1] 107/1	27 [23] 18/4 19/2 20/1 21/15 22/2 22/16	6-00 [4] 80/5 80/5 145/20 145/21
13 [12] 3/14 9/21 10/2 10/9 12/22 12/22 54/1	36/21 37/2 57/4 61/16 70/22 71/1 74/12	6-00 p.m. [1] 149/1
55/1 58/22 89/21 99/9 172/25	77/21 79/9 80/2 82/24 86/10 87/6 110/23	60a [1] 142/22
13100TY [6] 18/19 19/9 51/3 119/2 127/3	114/24 122/12 157/12	
134/19	270a [2] 79/12 82/21	
132 [2] 104/19 173/7	28 [2] 20/22 61/22	

7	143/7 166/3 action [1] 101/9 actions [15] 18/22 19/20 24/6 38/2 40/12 45/21 45/22 46/1 52/7 55/24 128/20 124/22 136/11 136/16 136/17 actual [2] 6/20 185/3 actuality [15] 13/3 14/9 16/8 85/15 104/24 104/25 111/12 112/9 117/13 140/10 141/21 145/13 162/5 168/4 170/18 Acura [6] 57/23 74/20 80/12 83/10 102/5 108/21 add [1] 107/19 addition [5] 8/12 49/5 49/10 52/14 112/11 additionally [3] 10/6 50/21 128/2 Additional [1] 102/4 address [4] 64 12/19 47/14 143/17 addressed [6] 4/7 11/21 35/8 56/16 89/22 135/24 adequately [1] 11/5 adjacent [3] 39/16 59/9 93/14 adjourn [1] 106/18 adjusted [1] 72/12 adjudicated [1] 13/15 adjudication [1] 147/5 adjudicative [1] 147/6 administrative [8] 3/7 3/22 11/7 11/14 15/25 56/21 72/17 90/2 admissible [1] 4/11 advanced [1] 95/13 advice [2] 77/25 99/13 advised [1] 86/25 admits [21] 7/6 21/1 21/5 29/25 30/4 30/14 32/8 32/17 33/13 33/25 34/3 45/16 53/13 56/17 89/10 89/23 142/18 142/20 146/4 146/13 159/9 affect [2] 60/21 153/12 afford [1] 78/15 aftermentioned [1] 21/8 after [32] 20/7 20/8 27/6 33/19 38/12 41/9 42/24 65/25 66/19 68/19 70/10 70/18 76/20 80/12 85/21 91/16 95/10 99/16 100/2 102/8 102/8 111/13 117/4 119/15 132/25 134/19 136/9 153/8 159/1 160/14 160/15 160/16 afternoon [2] 138/1 171/8 again [13] 12/11 12/11 12/12 40/14 51/18 73/1 88/22 126/1 133/24 141/6 144/13 153/11 166/6 against [11] 14 13/15 28/24 57/1 78/9 90/8 100/25 104/5 152/24 167/10 174/5 age [1] 86/16 aggressively [1] 109/17 ago [1] 14/5 agree [2] 8/19 148/4 agreements [1] 8/16 ahead [2] 25/25 109/12 alcohol [1] 63/21 alcoholic [2] 57/16 58/13 Alex [1] 59/1 Alfred [3] 77/21 86/10 110/23 all [39] 4/4 10/2 11/10 16/2 16/3 16/22 23/6 28/15 28/15 32/8 37/21 38/2 38/6 44/17 45/14 48/2 51/14 63/5 67/4 70/1 73/7 77/19 86/8 89/14 91/1 92/2 92/5 98/18 98/24 102/20 102/22 103/5 110/21 115/8 121/8 133/16 144/16 152/11 154/16 allegation [1] 34/11 allegations [1] 13/20 alleging [2] 3/14 21/9 allegions [1] 34/15 allow [9] 4/3 30/9 42/18 147/24 150/20 151/15 155/7 155/9 160/7 allowed [4] 4/1 112/12 138/24 169/10 alone [1] 103/2	alone [1] 103/3 along [3] 65/15 99/21 111/15 already [9] 65 30/19 49/20 68/19 11-49 121/9 122/15 122/19 133/25 also [42] 2/19 3/16 4/9 6/19 42/22 71/3 71/9 87/10 24/6 24/11 25/8 28/10 30/3 30/24 35/8 35/22 35/25 38/13 39/20 53/5 56/4 58/11 58/12 58/16 58/18 65/13 75/24 87/20 96/7 96/8 98/15 99/2 108/18 109/14 110/13 111/21 121/18 121/25 125/6 126/1 130/6 133/23 alter [1] 146/10 although [2] 95/8 165/19 am [39] 3/2 5/15 6/12 35/14 35/18 35/23 35/24 42/18 44/7 46/22 49/16 53/3 53/5 53/10 53/15 53/18 53/21 56/20 57/14 58/2 60/16 61/14 64/23 74/15 77/12 83/2 86/15 86/22 89/4 89/5 90/1 99/11 108/4 108/14 126/2 131/23 133/23 137/13 147/18 ambulance [3] 67/5 98/4 98/8 amend [1] 137/9 ammunition [1] 63/7 among [1] 156/25 amount [3] 9/18 58/12 119/5 analysis [1] 168/13 angle [1] 62/13 angry [1] 93/24 ankle [1] 62/8 Ann [11] 20/24 33/8 33/13 87/1 89/8 89/18 100/21 107/11 171/15 171/19 172/7 Ann's [1] 145/10 announced [1] 27/3 annoyed [1] 80/13 anonymously [1] 34/12 another [18] 6/9 62/5 8/9 13/3 13/16 26/21 28/19 28/21 35/6 49/22 56/7 74/21 92/16 99/20 108/19 117/20 118/25 155/19 answer [22] 44/9 78/18 79/1 79/4 102/6 102/9 102/17 102/21 102/23 103/1 103/6 103/10 103/12 103/16 103/21 103/24 104/23 105/14 106/2 106/8 106/16 116/13 answered [2] 20/21 101/24 answering [1] 20/23 ANTHONY [86] 1/5 6/23 7/4 7/9 21/6 21/16 21/21 22/4 34/21 37/14 49/3 53/12 53/16 54/7 56/18 68/25 71/11 74/22 74/25 75/9 75/10 75/14 76/1 76/9 76/9 76/23 77/4 77/8 77/11 90/15 90/23 91/4 91/9 91/11 91/13 91/19 91/24 92/7 92/11 92/21 92/23 93/5 93/15 93/19 94/2 94/12 94/15 94/25 95/6 95/15 95/17 96/1 96/5 96/10 96/12 96/25 97/10 97/14 97/20 98/12 99/19 99/19 101/1 104/6 108/18 108/23 109/5 109/9 109/11 109/14 109/19 110/1 110/5 110/7 110/10 110/12 110/13 110/15 129/22 130/5 130/13 134/12 136/11 154/23 172/19 174/6 Anthony's [9] 75/12 75/19 76/11 76/20 93/8 93/14 93/17 94/18 95/23 any [68] 4/6 5/11 8/16 8/19 12/7 12/17 13/20 20/5 21/12 28/25 29/4 30/11 41/10 42/15 42/25 56/24 56/25 57/1 59/15 59/18 64/11 68/2 73/12 78/5 78/17 78/20 80/11 87/1 89/13 90/6 90/7 90/8 93/1 93/3 96/21 96/23 97/1 97/6 97/7 100/8 100/17 100/18 102/16 103/23 106/6 111/23 112/21 113/8 114/15 114/16 120/14 123/20 125/21 128/1 132/25 136/10 138/7 138/15 139/4 143/8 143/8 147/1 154/10 163/18 170/21 170/24 171/1 171/8 anybody [4] 44/23 60/13 143/17 154/18 anyone [7] 59/14 59/16 59/17 63/11 67/15 68/3 98/8 anything [23] 13/24 17/14 49/11 60/18 66/17
8	8/29/87 [1] 83/3 8118 [8] 1/3 27/10 5/5 5/9 5/9 18/2 135/7 137/10 8188 [2] 3/14 5/8 84 [1] 38/21 846 [3] 46/21 47/6 172/15 87 [2] 83/3 108/15 870 [3] 46/20 47/3 172/14 881 [1] 5/6 8943 [2] 37/17 89/24 8-00 [2] 57/11 91/2 8-00 a.m. [1] 148/25	8/29/87 [1] 83/3 8118 [8] 1/3 27/10 5/5 5/9 5/9 18/2 135/7 137/10 8188 [2] 3/14 5/8 84 [1] 38/21 846 [3] 46/21 47/6 172/15 87 [2] 83/3 108/15 870 [3] 46/20 47/3 172/14 881 [1] 5/6 8943 [2] 37/17 89/24 8-00 [2] 57/11 91/2 8-00 a.m. [1] 148/25
9	9013 [3] 1/5 37/15 70/23 9103 [1] 56/18 911 [9] 66/3 66/12 66/13 77/8 82/15 86/4 88/22 97/11 110/13 95045 [1] 78/2 951 [1] 79/11 956 [3] 131/24 132/5 173/7 964 [2] 47/21 172/17 966 [2] 47/18 172/16 9-00 [1] 170/8 9-30 [4] 91/8 170/10 170/12 170/13	9013 [3] 1/5 37/15 70/23 9103 [1] 56/18 911 [9] 66/3 66/12 66/13 77/8 82/15 86/4 88/22 97/11 110/13 95045 [1] 78/2 951 [1] 79/11 956 [3] 131/24 132/5 173/7 964 [2] 47/21 172/17 966 [2] 47/18 172/16 9-00 [1] 170/8 9-30 [4] 91/8 170/10 170/12 170/13
A	a.m. [11] 1/11 80/3 80/5 80/12 83/8 87/7 92/7 108/25 108/25 145/2 148/25 absence [1] 97/1 ability [2] 63/21 140/9 able [8] 65/13 65/16 88/13 112/15 141/7 141/18 141/22 155/12 about [51] 16/8 18/4 20/1 28/12 46/12 60/20 61/13 65/2 66/21 67/12 67/15 69/14 72/5 72/10 73/10 74/7 80/2 81/23 83/8 84/17 90/10 91/2 91/8 91/16 91/21 92/1 92/6 94/16 95/13 108/25 116/18 124/22 129/14 130/22 139/4 144/11 144/15 145/1 147/20 149/7 153/16 153/17 155/13 158/22 160/5 160/11 160/21 161/11 162/22 170/9 170/17 abounds [1] 144/24 above [5] 77/16 79/23 86/5 101/8 110/18 above-captioned [1] 101/8 abuses [1] 99/11 absolutely [3] 110/16 154/9 157/22 Academy [1] 37/11 accelerate [1] 26/19 accelerated [2] 75/18 114/9 accelerating [2] 62/11 76/8 acceleration [2] 114/5 114/6 accept [5] 32/16 132/3 134/2 135/10 151/6 accepted [3] 55/17 126/6 163/14 Accident [1] 70/21 accompanied [2] 98/6 145/25 account [10] 27/18 29/20 30/5 31/11 100/1 146/10 149/25 151/7 152/19 153/4 accounts [1] 28/1 accuracy [1] 63/10 accurate [1] 174/7 accuracy [1] 63/18 acquire [1] 152/14 across [1] 91/17 act [2] 141/2 167/6 acted [2] 26/14 32/1 acting [7] 23/15 71/3 142/22 143/2 143/5	a.m. [11] 1/11 80/3 80/5 80/12 83/8 87/7 92/7 108/25 108/25 145/2 148/25 absence [1] 97/1 ability [2] 63/21 140/9 able [8] 65/13 65/16 88/13 112/15 141/7 141/18 141/22 155/12 about [51] 16/8 18/4 20/1 28/12 46/12 60/20 61/13 65/2 66/21 67/12 67/15 69/14 72/5 72/10 73/10 74/7 80/2 81/23 83/8 84/17 90/10 91/2 91/8 91/16 91/21 92/1 92/6 94/16 95/13 108/25 116/18 124/22 129/14 130/22 139/4 144/11 144/15 145/1 147/20 149/7 153/16 153/17 155/13 158/22 160/5 160/11 160/21 161/11 162/22 170/9 170/17 abounds [1] 144/24 above [5] 77/16 79/23 86/5 101/8 110/18 above-captioned [1] 101/8 abuses [1] 99/11 absolutely [3] 110/16 154/9 157/22 Academy [1] 37/11 accelerate [1] 26/19 accelerated [2] 75/18 114/9 accelerating [2] 62/11 76/8 acceleration [2] 114/5 114/6 accept [5] 32/16 132/3 134/2 135/10 151/6 accepted [3] 55/17 126/6 163/14 Accident [1] 70/21 accompanied [2] 98/6 145/25 account [10] 27/18 29/20 30/5 31/11 100/1 146/10 149/25 151/7 152/19 153/4 accounts [1] 28/1 accuracy [1] 63/10 accurate [1] 174/7 accuracy [1] 63/18 acquire [1] 152/14 across [1] 91/17 act [2] 141/2 167/6 acted [2] 26/14 32/1 acting [7] 23/15 71/3 142/22 143/2 143/5

<p>A</p> <p>anything... [18] 69/15 77/12 78/8 88/18 9/16 97/16 102/20 102/25 103/20 106/13 111/9 130/6 131/8 131/20 138/7 139/19 157/16 160/3 anyway [1] 147/7 apologize [1] 20/9 apparently [1] 72/22 appear [2] 15/19 36/17 appearance [3] 4/12 4/23 170/2 appeared [4] 64/7 96/2 96/8 96/9 appealers [1] 91/3 applies [2] 12/2 12/4 apply [1] 140/13 appointed [1] 78/16 apprehend [1] 169/7 approach [1] 167/13 approached [6] 22/25 40/7 40/9 64/3 185/15 121/16 approaches [2] 52/11 125/14 approaching [1] 61/17 appropriate [3] 9/17 13/1 73/5 approximately [14] 19/3 22/3 37/5 37/6 38/9 39/8 57/11 57/18 58/15 62/1 63/14 63/24 66/18 95/15 arbitrary [1] 28/25 are [68] 5/11 5/11 7/7 7/15 7/18 9/11 10/10 10/15 10/24 11/20 11/21 14/18 18/1 25/17 29/16 29/16 33/24 38/3 38/7 38/9 40/22 41/1 42/2 42/3 42/10 42/11 42/20 43/24 44/3 44/12 47/11 48/10 50/16 51/18 51/21 55/17 60/22 64/6 66/10 69/16 73/10 73/24 78/13 107/5 111/5 118/3 121/8 121/12 122/13 129/4 129/4 130/24 133/16 136/5 136/21 137/13 140/4 145/9 146/3 147/9 152/6 154/22 156/19 156/19 164/19 166/12 166/19 171/7 arcs [11] 38/13 38/17 38/18 38/19 39/10 92/8 99/21 131/17 132/16 136/19 170/4 arguing [2] 165/16 165/23 argument [2] 127/4 13/2 arm [4] 40/6 102/2 103/12 103/14 arcs [2] 76/15 141/12 around [13] 58/25 62/8 64/1 83/6 87/6 88/20 92/24 93/10 93/16 105/24 109/23 148/5 170/4 arrange [2] 14/14 16/12 arrest [17] 23/14 24/23 27/2 40/12 45/4 64/10 64/21 64/22 71/5 71/9 82/7 130/25 156/19 160/1 169/5 169/12 169/18 arrest [1] 103/19 arrest [2] 64/6 95/22 arrested [3] 44/24 45/1 45/11 arrived [9] 39/11 57/10 57/24 66/19 66/21 67/3 97/13 97/23 98/9 Artful [7] 58/5 58/8 58/16 75/1 91/22 91/23 109/1 Article [24] 3/10 9/1 15/15 15/23 15/23 18/25 19/23 20/15 21/22 21/24 24/4 24/9 24/12 25/8 25/12 38/6 45/18 49/6 55/23 56/8 128/19 128/6 136/17 165/11 as [169] 34/ 32/4 7/3 7/3 11/11 11/12 14/8 15/19 16/24 16/24 17/1 17/16 18/1 18/3 21/5 23/16 24/20 24/25 27/4 28/14 29/18 32/3 32/7 33/22 34/5 34/25 35/3 36/1 36/6 36/7 36/9 37/25 38/5 38/5 38/9 38/20 39/18 42/1 44/23 45/23 46/2 46/23 47/4 47/4 47/7 47/7 47/19 47/19 47/22 47/22 48/6 48/18 49/22 49/23 50/3 50/4 50/22 51/6 51/9 53/8 54/8 54/9 54/10 54/11 54/14 54/14 54/17 54/18 54/28 54/21 54/22 54/23 55/1 55/2 55/4 55/5 55/7 55/8 55/12 57/13 58/11 58/13 61/17</p>	<p>62/24 66/5 72/13 75/11 77/22 79/18 82/9 82/15 84/1 87/25 88/2 88/5 96/13 103/11 103/23 106/5 108/2 108/3 113/16 113/19 114/3 115/4 118/4 118/6 118/7 118/12 119/22 119/25 120/10 120/13 120/21 123/2 123/7 123/8 123/10 123/19 125/16 125/19 126/4 126/8 126/9 127/16 127/22 127/25 128/10 128/20 130/20 130/24 132/6 132/7 132/10 132/22 134/4 134/6 134/8 134/14 134/23 135/12 135/13 135/22 136/11 136/11 138/22 139/7 139/8 139/13 140/21 140/21 141/5 141/8 145/23 145/23 148/3 150/10 150/22 150/24 152/10 154/7 155/11 163/23 164/4 166/2 166/8 166/24 168/13 168/19 ascertain [1] 39/9 ask [28] 8/18 16/25 32/21 36/19 41/24 47/24 49/23 50/8 56/12 60/9 73/3 98/18 99/2 99/4 99/7 108/6 118/2 123/9 126/4 126/11 131/25 133/22 135/8 137/13 138/12 146/12 151/9 168/2 asked [16] 26/17 66/8 66/21 66/25 67/11 67/20 67/23 78/4 94/9 97/23 98/1 98/17 98/20 98/23 101/23 168/4 asking [11] 25/15 70/12 97/19 107/22 108/4 149/14 153/16 153/17 164/21 166/7 171/10 assault [12] 18/23 24/7 25/5 41/5 45/11 56/9 120/21 121/14 125/21 126/24 133/6 136/8 assessing [1] 153/4 assessment [1] 151/7 asshole [2] 81/9 157/9 assigned [18] 20/6 21/1 21/2 22/13 23/3 25/11 34/2 34/20 138/4 138/9 138/20 138/21 142/3 142/5 142/6 142/8 143/22 146/16 assignment [4] 34/5 143/11 143/12 144/11 assignments [1] 140/5 assistant [2] 30/25 31/1 assume [2] 79/7 169/13 assumed [1] 59/10 assuming [2] 9/22 13/8 ate [1] 57/12 attached [1] 51/4 attempt [7] 21/9 40/11 61/2 61/3 63/1 66/1 71/9 attempted [3] 62/8 64/20 71/4 attempting [5] 38/16 38/18 64/9 65/3 96/2 attempts [1] 13/19 attention [2] 83/11 84/24 attorney [16] 14/14 14/20 17/23 20/22 25/23 31/1 31/1 32/10 67/22 68/18 99/14 101/11 104/15 107/5 150/22 151/15 Attorney's [8] 14/21 45/13 46/8 48/12 49/4 115/24 120/2 132/21 attorneys [3] 26 2/13 4/6 August [5] 20/20 20/22 79/21 79/23 104/12 authorization [1] 99/12 authorized [1] 24/14 auto [2] 163/19 163/21 automatic [2] 140/1 140/3 available [3] 14/24 15/6 44/17 AVENUE [4] 1/8 2/7 80/23 108/16 avoid [1] 61/3 aware [6] 77/12 92/12 96/23 151/25 152/3 152/6 away [14] 63/14 63/24 65/7 65/17 65/21 76/14 85/25 88/14 92/18 105/23 105/24 106/2 110/12 110/15 awhile [1] 14/5</p>	<p>39/21 45/15 61/20 62/8 70/7 75/19 76 81/10 81/11 81/16 81/18 88/15 93/8 104/2 105/8 106/19 107/3 107/6 107/8 109/17 115/12 125/16 142/7 147/24 148/14 150/1 158/18 159/16 161/6 168/5 backed [11] 26/18 39/23 40/15 77/6 81/16 94/6 94/16 96/16 105/23 125/16 158/16 backing [3] 62/1 88/3 88/10 backpedaling [1] 93/18 backward [1] 84/22 backwards [5] 65/15 82/9 82/10 82/13 85/23 bad [1] 80/10 bag [1] 83/16 bar [9] 58/3 58/5 58/6 58/10 58/19 58/20 58/21 58/23 75/3 BARKET [8] 21/2 21/7 41/5 41/6 25/25 137/23 172/5 172/9 Barley [1] 74/17 bars [1] 58/2 base [3] 52/2 130/7 160/11 based [11] 31/13 105/4 105/5 114/15 119/7 124/15 124/16 127/5 133/10 149/19 155/10 basing [1] 164/6 basis [4] 46/4 50/22 114/14 160/6 be [119] 4/1 4/7 9/18 10/4 10/10 12/25 13/1 13/5 13/15 15/6 15/8 15/20 15/24 15/25 16/12 17/25 21/18 24/1 24/25 25/15 26/7 28/16 28/17 28/24 28/25 29/2 30/3 30/10 30/14 31/13 31/19 31/25 34/11 34/13 34/13 36/1 36/11 36/17 41/4 41/14 41/23 42/7 42/7 42/16 43/7 43/20 46/17 46/24 47/15 48/9 49/23 50/18 53/11 55/13 55/14 56/25 57/8 59/6 65/23 69/5 69/12 70/12 73/8 73/22 78/8 78/16 80/2 90/8 96/2 96/7 106/19 107/22 108/5 112/5 112/12 112/15 112/17 113/12 113/16 115/17 117/12 117/16 117/18 118/9 123/10 123/23 126/4 126/12 131/16 131/25 133/22 135/8 137/20 138/7 138/7 138/9 138/10 138/17 138/23 141/3 141/7 145/12 146/3 148/9 150/15 151/10 151/15 153/10 155/12 160/12 165/24 166/22 167/4 168/6 169/13 170/10 170/12 171/5 171/7 beans [7] 59/14 59/15 80/14 83/14 83/19 83/22 83/23 bear [1] 141/12 became [4] 31/5 38/17 38/22 92/15 because [34] 6/14 17/2 17/5 59/5 60/9 61/17 62/10 63/4 63/7 72/24 77/3 82/1 84/23 88/10 88/16 108/6 113/19 112/5 139/1 141/19 144/13 145/16 146/1 153/20 156/17 158/24 161/17 164/17 165/10 165/18 166/5 167/21 167/24 168/6 became [1] 135/1 becs [38] 34/ 3/12 11/6 32/6 32/11 33/19 34/2 36/9 37/25 46/1 48/6 49/20 50/6 73/15 73/20 80/8 86/16 86/25 93/3 99/7 100/12 110/7 111/13 118/12 120/21 123/10 126/14 128/12 132/9 134/8 135/18 135/22 136/5 139/12 144/1 144/10 162/16 167/2 beer [1] 91/13 beers [3] 91/4 91/18 91/23 before [42] 1/13 6/4 16/9 25/2 25/17 25/21 32/20 45/17 48/13 48/15 52/17 56/5 73/18 77/14 77/15 77/21 78/4 78/17 79/12 82/21 83/18 86/10 88/13 90/18 91/22 95/14 101/14 104/16 110/23 114/7 122/5 132/17 134/21 137/8 145/9 154/22 160/11 163/4 166/25 168/22 170/5 171/21 begin [12] 26/19 39/16 39/25 61/2 61/20 63/12 65/14 93/8 93/18 94/13 144/16 158/7 begin [4] 72/6 72/8 88/2 95/18 beginning [3] 101/16 142/7 156/19 begins [1] 125/16</p>
--	---	--

<p>B</p> <p>behavior [1] 136/18</p> <p>behind [18] 24/18 38/24 39/1 59/10 75/9 75/18 88/17 83/21 83/22 83/25 83/25 84/4 93/6 94/18 94/24 109/3 109/18 189/20</p> <p>being [22] 6/24 8/25 19/9 56/8 72/12 73/8 74/14 78/4 78/13 79/20 79/20 83/1 85/17 87/21 88/1 88/8 105/4 108/13 109/10 112/11 138/22 159/25</p> <p>belief [4] 16/20 119/8 127/6 165/20</p> <p>believe [26] 8/3 10/7 10/17 17/5 21/12 30/24 31/5 53/6 59/16 63/12 63/20 64/16 66/11 88/19 94/19 96/6 101/24 117/25 122/25 124/22 129/8 144/5 149/5 149/9 162/24 171/9</p> <p>believed [3] 59/5 61/9 62/4</p> <p>below [1] 37/3</p> <p>beneath [1] 64/2</p> <p>benefit [2] 115/7 115/8</p> <p>best [5] 62/2 63/14 136/2 136/3 150/21</p> <p>better [2] 114/15 170/10</p> <p>between [10] 27/16 59/18 61/20 75/14 75/25 77/13 94/3 109/20 114/11 160/22</p> <p>beverages [2] 57/16 58/13</p> <p>beyond [1] 112/6</p> <p>bias [2] 31/14 152/20</p> <p>Biana [42] 71/21 27/13 37/16 37/24 38/10 38/16 38/25 39/20 40/9 40/17 40/20 46/11 52/24 53/19 54/1 57/2 74/14 74/18 75/22 77/20 89/20 89/24 90/12 90/13 100/19 115/25 116/2 119/12 119/13 121/4 121/5 127/11 127/12 129/3 129/21 130/3 133/15 144/21 145/1 149/4 157/15 162/11</p> <p>Biana's [7] 38/15 54/13 54/25 129/12 129/14 172/21 172/25</p> <p>bill [2] 91/7 99/1</p> <p>bill [2] 92/3 163/18</p> <p>birth [2] 38/21 79/24</p> <p>bit [5] 47/15 83/17 144/13 158/15 170/5</p> <p>Black [2] 57/9 91/1</p> <p>bleeding [1] 63/18</p> <p>blank [2] 86/21 86/24</p> <p>bleeding [1] 86/2</p> <p>blocking [1] 60/1</p> <p>blow [1] 18/11</p> <p>blue [13] 57/23 58/4 58/10 58/15 74/20 80/12 81/13 83/10 84/15 91/12 102/5 108/21 143/15</p> <p>board [10] 119/19 119/20 119/25 120/4 122/3 127/14 127/17 134/21 134/24 147/6</p> <p>body [2] 63/18 93/23</p> <p>bone [3] 123/24 124/8 124/12</p> <p>Boris [1] 117/1</p> <p>born [5] 74/16 79/21 83/3 86/16 108/15</p> <p>bosses [2] 67/25 68/1</p> <p>both [18] 3/21 4/9 25/5 25/6 27/11 29/12 30/22 38/16 38/23 39/6 40/6 64/10 65/23 67/20 67/23 71/6 91/14 113/20</p> <p>bottom [1] 124/7</p> <p>box [1] 70/25</p> <p>boyfriend [18] 83/5 83/7 83/13 83/19 83/21 83/24 84/1 84/7 84/12 84/20 85/6 85/9 85/11 85/12 85/20 85/21 108/17 122/1</p> <p>boyfriend's [1] 85/5</p> <p>brace [1] 98/3</p> <p>brake [1] 113/22</p> <p>brakes [2] 95/5 95/12</p> <p>brand [1] 139/25</p> <p>break [12] 69/1 69/23 70/2 70/4 70/17 71/14 74/6 85/5 124/18 137/19 168/24 169/22</p> <p>breaking [3] 23/10 71/8 130/25</p> <p>Brew [2] 57/9 91/1</p>	<p>brewed [1] 91/4</p> <p>Brian [4] 14/21 99/1 99/19 100/4</p> <p>brief [3] 61 32/21 33/1 68/17 70/5 70/10 100/9 147/21</p> <p>briefly [2] 98/13 129/24</p> <p>bright [1] 80/18</p> <p>bring [2] 146/20 167/9</p> <p>broke [3] 18/11 19/16 23/1 23/21 23/22 27/8 40/10 169/17</p> <p>Brook [2] 79/22 79/25</p> <p>brought [2] 13/15 152/24</p> <p>BRUCE [4] 21/7 4/15 15/14 122/18</p> <p>Building [1] 101/12</p> <p>bullet [3] 46/14 48/22 51/4</p> <p>burden [2] 146/25 147/3</p> <p>Burrows [8] 2/20 2/21 2/22 2/24 5/2 5/14 5/24 17/24</p> <p>busted [1] 105/16</p> <p>besting [1] 82/3</p> <p>butt [12] 64/17 65/5 102/10 105/17 105/18 116/22 121/17 121/19 121/24 125/3 130/20 133/7</p> <p>button [1] 113/23</p> <p>bystanders [1] 136/19</p> <p>C</p> <p>C-O-R-N-I-A [1] 7/25</p> <p>cab [29] 38/20 39/1 93/14 93/21 93/25 94/3 94/5 94/5 94/22 95/11 95/13 95/18 96/11 96/14 96/15 96/23 97/21 98/14 98/16 109/21 118/14 111/14 116/16 116/25 129/16 129/24 130/1 136/18 164/6</p> <p>caliber [12] 18/10 19/12 20/10 22/13 24/15 40/3 40/11 132/15 134/17 139/23 139/24 140/16</p> <p>call [15] 97 146 16/17 17/12 31/23 32/18 32/20 66/19 71/22 88/21 92/5 107/6 143/15 156/6 171/1</p> <p>called [8] 33/5 66/3 77/8 82/15 86/4 110/13 152/4 156/11</p> <p>calling [2] 107/8 171/7</p> <p>calls [2] 33/7 160/24</p> <p>calm [1] 26/17</p> <p>came [16] 40/7 43/23 56/6 61/7 80/17 82/2 84/5 95/14 98/12 98/17 98/23 99/2 102/1 114/23 129/22 146/18</p> <p>can [52] 8/21 9/6 10/2 12/9 12/19 13/17 16/17 17/2 17/3 34/13 43/22 44/8 44/10 44/11 45/21 47/10 50/20 51/16 69/1 69/5 70/16 70/16 78/8 105/9 105/10 107/11 112/8 112/14 112/25 115/1 115/18 116/13 118/9 118/19 124/2 126/20 130/8 134/13 135/15 137/20 137/21 138/2 138/11 142/13 142/14 145/12 155/4 159/20 169/15 170/18 170/19 171/11</p> <p>can't [6] 11/23 13/16 112/14 154/24 159/18 169/11</p> <p>canceled [1] 90/21</p> <p>cannot [9] 12/25 13/1 31/20 58/19 60/22 78/15 111/18 112/1 166/22</p> <p>capability [1] 113/9</p> <p>Captain [1] 37/10</p> <p>captained [1] 101/8</p> <p>car [166] 22/4 23/1 23/20 26/4 26/4 26/13 26/16 26/18 26/20 27/1 27/11 27/8 27/10 27/10 27/15 46/13 47/12 50/18 51/22 59/20 59/25 61/5 61/14 61/14 61/21 62/1 62/9 62/18 62/23 64/18 65/9 65/14 65/17 66/13 71/8 75/10 75/13 75/19 75/20 75/24 75/25 76/1 76/5 76/18 76/20 80/6 80/17 80/25 81/12 81/12 81/13 81/15 81/16 81/18 81/19 81/20 81/22 81/24 82/12 83/13 83/14 83/15 83/19 83/22 83/25 83/25 84/15 84/19 85/1</p>	<p>... 25/18 25/22 26/1 27/12 27/15 27/17 27/21 27/25 28/2 28/2 28/4 28/5 28/7 28/10 28/11 28/13 28/13 28/15 31/11 31/11 32/10 32/11 32/12 32/13 33/1 33/7 33/12 33/14 33/18 33/19 33/19 34/2 34/3 34/6 34/6 34/8 34/16 34/17 34/18 34/18 34/19 34/22 34/21 34/25 35/13 35/24 36/10 37/25 101/20 102/15 103/8 105/19 105/22 109/8 109/13 109/15 109/16 109/18 109/20 109/21 109/24 109/25 110/3 111/13 111/20 111/22 111/24 112/19 113/9 113/17 113/19 113/24 113/25 114/2 114/3 114/5 116/24 121/16 122/2 157/23 158/16 158/17 158/18 158/19 158/21 158/22 161/6 161/9 161/17 161/24 162/2 162/16 163/5 164/18 168/25 169/10</p> <p>car's [1] 95/4</p> <p>car, [1] 103/18</p> <p>car, [2] 102/18 102/21</p> <p>card [1] 95/9</p> <p>care [1] 61/13</p> <p>carry [5] 139/19 141/9 141/10 141/11 141/19</p> <p>carrying [1] 95/7</p> <p>cars [9] 27/7 81/1 81/3 84/5 84/7 84/11 106/20 109/16 157/3</p> <p>Carver [1] 98/25</p> <p>case [18] 1/3 3/13 54 55 17/9 18/2 24/25 25/14 29/7 32/11 119/24 123/18 135/7 137/10 145/15 146/8 150/23 157/20</p> <p>cash [2] 91/7 92/2</p> <p>CAT [1] 124/7</p> <p>caught [1] 65/22</p> <p>cause [2] 23/7 23/8</p> <p>caused [3] 18/12 19/7 23/24</p> <p>cawing [6] 65/23 95/20 96/17 116/16 119/5 127/3</p> <p>cell [2] 86/21 92/21</p> <p>certain [6] 81/4 81/6 43/8 43/16 43/20 149/14</p> <p>certainly [5] 12/3 29/22 73/3 73/4 147/12</p> <p>CERTIFICATE [1] 174/1</p> <p>Certified [3] 33/20 174/2 174/14</p> <p>certify [1] 174/4</p> <p>chain [1] 109/23</p> <p>change [1] 169/16</p> <p>channels [1] 36/22</p> <p>charge [32] 11/17 19/25 45/17 49/6 115/13 119/7 119/17 119/18 120/2 120/7 120/25 125/7 127/5 127/18 127/19 127/20 128/4 128/23 131/10 133/21 134/21 134/24 135/1 135/1 135/25 136/2 136/7 136/8 141/22 143/23 165/10 166/5</p> <p>charged [9] 9/20 29/17 41/4 43/7 43/20 46/2 120/21 166/22 167/24</p> <p>charges [35] 3/13 3/20 6/20 9/7 10/6 10/15 10/25 11/3 11/5 11/19 12/9 13/10 13/14 17/16 17/25 18/2 20/9 20/17 20/21 21/8 28/18 31/21 42/6 45/14 45/17 115/11 119/21 119/22 120/2 128/2 136/6 137/10 145/9 154/21 167/10</p> <p>Charles [6] 79/11 79/13 79/14 82/22 101/4 104/9</p> <p>Check [1] 70/25</p> <p>checking [1] 170/25</p> <p>chest [1] 40/6</p> <p>chief [7] 31/6 36/23 36/23 37/8 37/9 41/6 67/23</p> <p>chiefs [3] 29/11 30/1 119/20</p> <p>chip [1] 113/21</p> <p>choose [2] 10/3 140/11</p> <p>chose [2] 13/11 140/23</p> <p>Christopher [2] 90/13 90/20</p> <p>Cicco [6] 77/18 77/22 86/7 86/11 110/20 110/23</p>
--	---	---

C		
circumstances [3] 100/1 115/4 150/17	120/14 125/13 131/13 132/25 136/10 136/21	Class [1] 116/23
cite [2] 10/20 15/14	conduct [19] 18/7 19/6 24/21 25/3 29/14	couch [1] 87/7
CITY [2] 2/16 4/19	34/17 45/9 45/19 45/22 45/24 52/6 56/9	could [22] 11/5 26/11 34/11 34/12 46/1 60/23
civil [5] 3/9 3/23 10/20 32/10 166/25	115/14 116/4 117/5 120/20 125/20 165/11	61/8 61/18 67/25 85/16 88/17 93/21 93/23
civilian [1] 26/10	165/12	106/20 109/21 110/14 111/24 120/21 140/13
civilians [2] 22/10 22/15	conducted [2] 8/25 37/25	167/9 167/10 167/15
civility [1] 167/12	conducting [2] 26/6 41/1	couldn't [3] 85/16 94/14 109/10
claim [4] 100/24 101/14 104/4 152/4	conference [1] 68/16	counsel [18] 4/12 4/13 6/9 8/9 8/13 8/18
claimant [2] 2/6 101/8	confessed [3] 29/14 155/20 155/24	35/25 46/23 49/21 53/6 53/8 117/19 122/25
clarification [2] 4/8 10/20	confession [1] 156/17	122/25 126/1 132/2 133/24 135/16
clarity [2] 104/23 171/7	confident [1] 63/10	counsel's [1] 16/24
Class [3] 18/24 19/22 87/3	confidential [2] 69/10 69/17	count [17] 18/3 19/2 19/25 21/24 52/5 56/5
classic [2] 147/9 147/12	conflict [1] 39/14	117/23 117/24 118/1 118/6 120/9 122/14
classified [1] 127/22	conflict of interest [5] 20/11 60/19 61/3 92/25	130/7 131/21 138/1 138/2 165/5
class [1] 118/20	157/20	causing [1] 104/25
clear [4] 10/21 164/20 165/24 168/7	confronted [1] 26/16	country [3] 2/14 4/18 147/6
clearly [2] 30/15 69/20	confusing [1] 168/11	counts [7] 3/14 3/17 9/6 9/10 21/22 137/8
client [2] 9/20 145/16	connected [1] 154/6	137/11
client's [1] 69/6	connection [1] 41/4	COUNTY [105] 1/2 1/7 2/5 5/1 5/14 6/17
clipping [1] 96/16	consciousness [1] 98/1	6/25 7/2 7/5 7/12 14/19 14/20 17/24 21/17
cloaked [1] 11/10	consider [6] 73/2 120/24 121/13 161/4	22/7 27/19 30/8 30/23 30/23 31/2 31/6 35/7
close [2] 31/4 61/2	168/14 168/18	37/20 37/23 40/24 41/3 44/20 45/13 46/6
clothes [1] 38/11	consideration [6] 111/3 113/15 115/19	46/8 48/11 49/4 49/17 51/11 52/2 52/9 52/16
clothing [1] 64/2	153/18 153/20 154/9	54/3 54/4 55/3 55/6 67/18 67/24 68/3 68/6
coercion [2] 147/9 147/13	considered [2] 24/1 138/10	68/13 68/20 70/20 74/11 77/25 79/15 82/24
coercive [1] 147/4	consisted [1] 37/19	89/9 93/13 97/13 97/22 98/6 98/20 99/18
color [1] 66/14	consistent [2] 32/2 32/4	99/22 99/24 100/6 100/13 100/15 100/25
come [11] 12/11 31/10 34/19 77/9 103/25	consisting [7] 37/3 51/4 71/17 86/6 110/19	101/3 101/11 104/4 104/5 104/8 104/14
111/23 128/19 142/17 142/20 159/16 166/25	119/20 174/6	108/11 111/15 112/22 113/1 115/21 115/23
coming [4] 75/1 87/16 99/4 171/6	consists [1] 89/12	119/9 119/10 121/1 121/2 121/21 121/22
Comiskey [2] 2/21 5/21	constitute [5] 18/22 19/20 52/7 56/9 165/12	125/5 127/7 127/8 128/24 129/1 131/5
Comstock [1] 74/17	constituted [11] 24/7 25/3 45/22 46/1 115/20	132/21 133/12 152/1 152/7 152/8 152/15
conceded [2] 33/11 70/23	116/4 116/19 117/5 120/20 125/20 136/17	152/24 153/12 154/2 154/3 156/14 159/1
conceding [7] 2/20 5/23 37/9 37/10 56/16	constitutes [3] 56/24 90/6 164/11	159/9 173/1 173/2 174/5
89/22 143/25	constituting [2] 24/1 55/24	comp [9] 6/2 8/20 12/18 13/25 74/22 77/10
commands [1] 64/15	constitution [1] 141/12	108/19 110/17 117/2
commanded [1] 152/13	consumed [1] 58/11	course [6] 3/24 11/4 23/13 145/19 151/8
commanded [1] 92/19	contact [2] 92/21 96/22	167/5
commands [2] 72/10 111/5	contains [1] 113/21	court [9] 33/20 78/9 78/17 154/22 170/3
Commission [1] 34/14	confirmation [1] 101/17	174/1 174/3 174/14 174/15
commissioner [10] 11/16 16/1 16/2 36/22	confront [7] 42/19 44/8 59/21 69/25 70/16	cousin [2] 90/13 90/20
115/3 142/23 143/2 143/3 143/5 143/7	70/16 107/9	Covais [5] 67/9 67/19 68/5 68/23 98/23
Commissioner's [2] 35 43/10	continued [10] 13/12 31/16 61/1 61/6 61/12	cover [1] 95/3
committed [2] 29/22 164/19	62/22 63/3 63/6 75/22 81/17 158/17	covered [4] 76/14 95/4 114/10 131/16
commit [1] 99/21	confining [2] 88/4 94/23	crazed [1] 62/24
compact [1] 93/12	continuously [1] 88/15	credibility [5] 29/6 150/25 153/5 153/13
compassion [3] 26/10 26/24 162/22	contracting [1] 86/23	155/4
company [3] 80/8 117/1 164/7	contractors [1] 86/23	credit [2] 29/24 30/4
compartment [2] 19/14 133/9	control [6] 15/22 61/23 73/16 128/16 128/17	crime [17] 18/23 19/20 44/19 46/9 49/13
compensation [1] 100/10	133/8	51/12 52/7 115/24 116/14 119/10 127/8
complaints [1] 15/19	contractions [2] 99/11 127/4	131/22 132/14 133/12 133/14 164/11 164/19
complaint [5] 34/11 78/1 142/11 142/17	conversations [3] 14/19 68/3 68/18	crimes [2] 25/4 29/23
143/15	convert [2] 119/22 160/12	criminal [29] 3/23 12/2 19/21 24/2 25/4
complete [1] 44/21	converted [3] 120/2 127/19 134/25	29/14 34/17 46/2 46/5 52/7 55/24 57/1 90/9
completed [2] 70/11 100/3	conveyed [1] 159/11	115/15 115/20 116/5 116/19 117/6 117/25
completely [4] 44/5 45/7 61/23 145/8	convolutedly [1] 153/10	118/23 136/7 165/5 165/13 165/14 166/23
compliance [2] 56/22 90/4	cop [2] 82/8 85/8	167/1 167/9 167/25 168/13
comply [1] 169/6	copies [5] 6/17 7/7 46/18 48/10 53/6	criminality [1] 141/23
computer [1] 143/16	copy [44] 6/6 6/9 6/14 6/19 7/12 8/9 8/10	cross [3] 3/25 137/22 172/9
concern [4] 12/1 12/14 15/13 16/25	8/11 35/18 35/24 35/25 36/12 46/22 47/3	cross-examination [3] 3/25 137/22 172/9
concerned [1] 26/8	47/6 47/18 47/21 47/25 49/17 49/22 53/15	crossed [4] 79/19 80/20 80/22 83/15
concerning [3] 3/19 4/4 12/23	79/18 117/12 117/19 117/20 118/16 122/24	crosses [1] 79/22
concerns [5] 12/17 13/23 42/19 74/2 154/10	123/17 125/25 126/3 126/18 132/1 132/5	crowded [1] 91/16
conclude [5] 26/12 29/3 120/18 124/18 128/8	132/14 133/24 135/12 135/15 135/16 172/14	crying [1] 118/9
concluded [4] 29/20 128/10 128/15 171/16	172/15 172/16 172/17 173/7 173/9	cryptic [1] 174/7
concluding [1] 55/22	Curtis [11] 7/24 57/6 90/23 107/22 108/12	cubicle [1] 67/22
conclusions [18] 28/8 31/19 43/12 43/13 46/4	108/13 110/22 116/2 119/12 121/6 127/11	curb [2] 59/10 66/22
48/16 50/25 52/3 52/4 52/18 56/6 111/23	Curtis's [2] 108/1 173/3	curious [5] 69/21 138/5 139/3 160/5 166/8
114/15 116/4 128/12 128/20 133/5 164/22	correct [2] 9/2 11/19 21/12 28/1 50/18 73/9	current [1] 147/2
conclusions [17] 35/3 36/15 41/10 41/12 42/2	141/14 141/20 150/2 156/20 154/21 154/24	currently [4] 86/17 86/22 89/6 129/5
42/25 43/2 43/16 43/23 113/15 114/23	157/13 157/18 162/13 162/15 162/18 164/3	curse [1] 81/10
	164/9 169/9 169/20	cursing [4] 75/13 84/15 102/22 158/7
	corrections [1] 89/14	cut [1] 59/16

C
cuttings [1] 59/17

D
D-O-B-R-O-C-H-A-S-S-E [1] 87
DA [1] 100/15
damage [21] 19/7 23/24 46/12 47/12 48/24
50/23 51/3 51/21 52/1 116/17 118/25 119/5
163/15 163/23 163/24 164/5 164/10 164/12
165/18 166/14 167/8
damaged [3] 64/8 164/18 166/5
damaging [2] 119/3 166/24
dancing [2] 58/18 58/18
dancer [4] 167/21 167/23 168/4 168/15
Daniel [1] 37/10
Danielle [3] 33/19 174/2 174/13
dashboard [2] 113/23 113/24
date [30] 22/16 36/7 36/21 38/21 44/18 47/5
47/8 47/20 47/23 50/4 54/9 54/12 54/15
54/18 54/21 54/24 55/2 55/5 55/8 70/25 79/9
79/24 90/23 108/3 118/8 123/8 126/10 132/7
134/6 135/14
dated [12] 3/6 7/6 20/22 33/14 53/25 56/15
70/21 74/11 82/24 82/21 104/12 122/12
day [11] 13/3 15/8 15/8 79/12 80/10 82/21
101/9 149/4 157/11 171/22 174/8
daze [2] 98/2 102/10
deadly [20] 17/4 35/11 35/12 35/19 36/5
36/12 36/24 37/3 38/1 38/5 43/25 44/13
44/16 114/22 115/2 115/6 122/4 136/12
163/2 172/13
dealer [1] 111/21
dealt [1] 167/2
decide [1] 78/18
decided [5] 39/14 39/21 90/22 92/5 157/19
decipher [1] 79/7
decision [2] 141/4 147/19
defeat [2] 61/18 165/2
defendant [1] 79/6
deferred [1] 72/9
definitely [1] 76/4
degree [11] 18/23 19/21 24/2 24/7 25/5 25/5
45/11 52/8 56/10 118/24 126/25
delay [6] 112/2 112/2 112/3 114/6 159/28
161/12
delete [1] 105/9
deliberately [1] 65/4
delicacies [1] 117/18
Deloggi [1] 143/24
DeLorenzo [4] 21/24 5/20 107/8 107/11
DeMartino [1] 37/12
demonstrate [1] 111/22
demonstrated [1] 72/9
Dennis [1] 8/7
Dennison [1] 101/11
Department [86] 1/2 1/7 25 3/17 5/1 6/17
6/25 7/6 9/1 9/17 14/2 14/6 14/9 14/13 14/17
16/12 16/16 16/18 17/24 20/5 21/9 21/17
22/11 23/17 24/11 25/1 28/5 30/8 31/7 31/20
33/7 34/18 35/7 36/2 36/9 37/23 40/25 41/3
44/20 47/2 48/6 49/24 50/17 51/16 68/13
70/28 72/23 73/20 73/22 74/11 77/24 82/23
89/9 92/18 100/7 100/14 107/17 108/5 108/11
117/8 118/9 118/17 119/10 123/10 125/11
126/5 126/12 127/8 127/13 132/10 133/20
134/8 135/22 137/5 138/4 138/18 139/5
139/6 140/6 140/17 141/18 142/3 142/4
165/15 167/12 174/5
Department's [33] 42/4 51/4 17/9 24/24 36/6
37/21 47/4 47/7 47/19 47/22 50/3 51/12 54/8
54/11 54/14 54/17 54/20 54/23 55/1 55/4
55/7 108/2 118/7 118/13 123/7 126/9 132/6
134/5 135/13 165/25 166/1 166/9 172/11
departmental [11] 3/5 3/8 10/12 21/4 21/23
24/5 25/12 25/17 38/4 136/12 171/2
depending [1] 90/2
deputy [2] 48/23 48/22
deputed [1] 50/17
deputing [1] 132/15
deposed [1] 154/5
deposes [4] 74/15 79/20 83/2 108/14
deposition [6] 101/7 150/4 150/22 151/23
153/3 154/12
deprive [1] 146/7
depriving [1] 147/11
deputy [8] 31/6 36/23 36/23 37/8 37/8 41/6
143/6 143/13
Describe [1] 46/12
described [1] 102/3
description [1] 66/13
desperated [1] 34
desk [1] 67/11
detail [1] 149/16
details [1] 38/8
detective [35] 2/21 5/22 33/8 33/12 37/11
42/5 48/5 50/12 68/12 68/20 68/23 77/18
79/18 79/13 82/18 82/22 86/7 89/5 89/17
93/13 98/20 98/22 99/23 100/20 101/4 104/9
107/8 107/10 108/5 108/7 110/20 114/16
114/21 132/8 143/21
detectives [5] 30/6 98/22 156/14 159/1 159/6
determination [8] 28/23 29/17 30/16 30/17
42/4 42/15 119/21 122/6
determinations [2] 29/6 123/20
determine [6] 11/15 27/25 44/4 111/14 128/1
128/5
determined [4] 11/6 45/23 45/25 136/15
diagonal [1] 62/13
diagram [1] 51/5
did [151] 8/18 12/16 15/14 16/20 23/8 34/19
34/25 35/3 34/14 41/9 41/12 42/8 42/25 43/9
43/16 43/16 45/8 45/8 48/15 48/18 48/20
49/1 49/5 51/7 52/2 55/21 56/1 56/4 56/11
57/13 58/13 58/24 59/13 59/14 59/16 60/12
60/25 61/17 62/9 62/21 62/22 63/16 64/11
65/4 65/12 66/12 66/16 67/14 67/25 68/2
77/10 81/12 81/13 88/14 91/15 94/19 95/5
95/7 96/21 96/24 97/1 97/15 97/20 98/18
98/24 99/6 99/7 103/4 103/15 103/22 103/25
106/5 107/10 111/23 112/21 113/7 114/25
115/7 115/9 117/6 118/22 118/24 120/8
120/14 120/18 120/23 121/12 122/3 122/4
123/20 124/18 125/21 125/23 126/23 126/25
127/13 128/1 128/4 128/8 128/19 128/22
130/2 130/12 130/13 130/14 130/17 132/19
132/25 134/16 134/20 135/1 135/25 136/9
138/2 138/13 142/11 142/17 142/28 143/8
144/4 144/17 144/23 144/25 146/17 146/19
150/13 151/13 151/19 151/12 151/17 151/22
154/5 154/6 154/10 159/6 160/4 161/4 161/5
161/7 161/8 161/14 161/15 161/16 161/19
162/7 162/21 162/24 163/18 164/16 168/14
168/18
didn't [18] 42/9 60/18 72/11 89/14 101/24
110/5 110/6 117/14 144/14 158/25 151/5
153/19 153/20 153/25 162/3 162/11 165/3
168/2
difficult [5] 11/21 43/24 44/12 58/2 113/19
DILFONARDO [129] 1/5 3/12 62/4 75/5 18/8
19/6 19/11 19/16 20/7 20/20 20/21 21/7
21/16 21/21 22/4 22/11 22/20 22/25 23/5
23/15 23/22 24/12 24/28 2

D		
doing [11] 28/16 28/17 40/2 60/22 75/15 92/4 99/5 102/5 157/16 161/20 168/19	daily [5] 33/19 74/14 79/20 83/1 108/13 during [9] 40/12 49/20 57/3 63/22 65/10 111/3 131/14 133/5 145/17	Laan [14] 8/1 46/11 53/1 53/24 54/22 86/13 86/15 89/15 116/1 119/12 121/4 121/5 127/11 172/24
dollars [7] 117/3 152/14 153/1 153/12 154/2 154/13 163/15	dances [4] 23/16 32/3 71/4 167/8	erratic [1] 83/16
dollars' [1] 164/5	duty [16] 18/7 19/5 22/12 29/21 38/7 38/10 40/3 62/7 67/10 118/21 126/22 134/15 138/21 139/11 148/1 148/20	escalate [1] 68/19
don't [44] 9/16 9/25 10/7 10/7 11/23 12/10 12/11 13/4 17/14 58/5 61/13 62/18 64/5 73/15 74/23 76/13 81/8 84/21 94/11 94/15 97/6 97/15 97/17 97/18 97/24 98/7 98/21 102/23 109/4 110/2 110/4 110/9 117/13 135/17 146/24 146/25 148/5 154/20 155/23 157/7 166/9 170/21 170/23 171/4	E	essence [1] 30/12
done [14] 11/24 44/16 44/22 44/22 48/24 56/22 60/8 60/20 90/3 112/17 131/3 137/3 146/3 169/14	e-mails [1] 72/14	evaluation [1] 37/19
door [25] 51/22 52/12 60/20 64/4 64/14 64/15 64/18 65/2 65/18 75/25 76/25 82/9 85/5 85/10 85/20 85/24 85/25 88/6 94/13 95/24 102/12 103/15 103/16 105/19 125/14	each [6] 56/13 76/17 78/24 84/15 91/20 94/4	evaluations [1] 150/25
doors [1] 27/7	earlier [4] 49/9 141/6 159/25 170/8	even [6] 31/22 63/6 85/16 114/5 153/20 166/21
Dordon [1] 143/14	early [2] 22/15 57/3	evening [5] 57/5 63/21 90/17 97/1 145/21
double [3] 10/8 12/1 60/3	epics [1] 71/7	events [1] 12/6
doubled [1] 90/14	easily [1] 114/11	eventually [5] 39/3 40/19 63/24 97/3 131/16
doubt [2] 11/1 171/12	eat [1] 170/6	ever [2] 163/19 154/18
down [17] 26/18 59/2 60/8 61/10 62/22 76/23 81/5 82/10 85/3 85/4 89/11 92/8 95/2 122/15 122/20 157/14 158/4	economy [1] 56/2	every [4] 15/21 53/6 71/18 140/4
drag [1] 85/11	Ed [3] 75/19 77/5 110/10	everybody [3] 56/3 84/14 162/8
dragging [2] 40/16 65/15	Eddie [18] 57/2 57/7 57/23 58/25 59/3 59/8 59/17 59/21 65/21 66/16 67/5 108/19 108/20 108/21 109/2 109/3 109/6 109/13	everyone [3] 57/13 57/15 170/14
drank [1] 57/13	Edmond [1] 37/9	everything [3] 97/9 153/18 154/8
drawn [1] 64/5	Edward [9] 37/16 54/25 74/18 74/19 89/20 89/24 100/19 143/14 172/25	evidence [57] 3/19 4/3 4/10 21/18 25/2 32/14 35/15 35/23 36/7 42/16 46/18 47/4 47/7 47/19 47/22 50/4 50/7 51/14 53/11 54/6 54/9 54/11 54/14 54/18 54/20 54/23 55/1 55/5 55/8 55/13 55/18 107/23 108/2 115/16 115/17 117/18 118/7 118/13 121/9 121/12 123/8 126/4 126/7 126/9 129/5 132/1 132/4 132/6 133/16 133/20 133/22 134/3 135/9 135/11 135/13 136/5 137/7
DRB [1] 119/19	effort [1] 152/13	exact [1] 60/23
drink [9] 57/15 58/9 58/10 58/10 91/7 91/14 91/14 91/20 91/25	effect [2] 130/25 168/25	exactly [1] 101/25
drinking [2] 57/16 99/8	effectuating [2] 24/23 169/19	examination [10] 3/25 33/23 51/1 70/14 137/4 137/22 171/15 172/7 172/8 172/9
drinks [9] 57/13 57/20 58/8 77/10 91/5 91/15 91/19 91/24 110/17	eight [2] 56 144/15	examine [1] 152/7
drive [34] 18/6 19/4 20/2 22/6 37/7 39/9 39/25 40/1 59/12 60/2 60/16 60/16 62/23 65/7 71/2 81/3 81/4 81/9 84/14 86/3 86/17 87/18 89/6 92/18 105/23 114/1 157/4 160/19 160/23 161/10 161/11 161/14 161/21 161/24	eight' [1] 66/6	examined [2] 33/21 111/13
drive' [1] 157/8	either [3] 14/17 34/11 148/25	example [1] 11/24
driven [9] 22/22 32/6 68/9 68/22 73/8 73/22 99/17 100/3 163/5	electric [5] 111/19 113/20 113/21 114/4 160/12	exceeding [1] 119/6
driver [21] 20/12 40/8 40/10 60/13 63/1 64/21 66/24 76/7 87/22 93/1 93/25 94/5 95/25 96/3 96/8 96/9 96/21 98/14 109/9 110/15 129/24	else [14] 13/24 17/14 40/5 49/11 52/2 57/13 63/11 92/5 98/8 111/9 111/20 130/14 130/17 131/20	Excellent [1] 137/17
driver's [34] 18/16 19/16 23/2 23/22 24/18 48/25 51/22 52/11 52/12 60/8 64/4 64/14 64/17 65/18 71/9 76/25 82/2 85/10 93/20 94/1 95/18 95/19 96/4 96/13 96/14 102/12 105/15 105/16 116/21 119/4 125/14 125/15 130/19 163/24	email [2] 68 49/21	Except [1] 162/11
driver's-side [1] 96/13	emergency [1] 185/25	exception [1] 42/21
driving [28] 23/24 41/5 57/23 59/22 62/25 74/21 74/25 75/3 80/3 80/16 80/19 83/10 83/15 83/17 83/20 83/24 84/4 85/22 91/10 91/11 92/10 92/11 92/12 108/21 108/23 110/12 157/23 168/19	employed [1] 86/22	excerpt [1] 104/3
dropp [1] 65/12	employment [5] 13/13 139/2 139/8 139/12 141/8	excess [2] 13/7 23/25
dropping [2] 128/18 133/8	empire [1] 63/5	exchange [2] 39/19 93/24
drive [16] 40/17 40/19 57/21 81/1 81/21 82/1 82/8 82/14 82/15 85/25 91/9 105/24 105/25 157/2 158/20 158/24	EMS [1] 67/3	exchanged [7] 67 67/1 7/9 49/20 60/23 117/21 134/1
checked [3] 85/3 95/2 95/3	EMT [1] 67/6	exchanging [1] 100/9
checking [1] 85/4	EMTs [1] 98/5	excluded [1] 42/16
due [8] 11/25 12/3 12/7 13/21 29/1 44/8 90/21 136/25	En [1] 67/8	excuse [3] 23/21 26/24 157/1
	end [13] 17/9 24/24 25/14 28/4 31/18 43/15 75/21 77/2 82/14 144/25 146/11 148/5 151/12	except [1] 141/24
	endangerment [1] 45/12	exhibit [36] 36/2 36/6 47/4 47/7 47/19 47/22 48/22 48/24 48/24 50/3 50/6 54/8 54/11 54/14 54/17 54/20 54/23 55/1 55/5 55/8 108/2 108/9 118/7 123/7 124/6 124/10 126/9 132/4 132/6 134/3 134/5 135/11 135/13 156/3 163/8 163/10
	ended [5] 24/19 27/14 72/12 90/21 96/18	Exhibits [1] 50/17
	ends [1] 127/0	exhibits [2] 131/4 172/11
	engaged [2] 18/6 19/5	exit [2] 12/8 13/21
	engaging [1] 134/19	exit [1] 64/22
	engine [29] 39/25 75/17 81/20 94/20 109/19 110/1 111/7 111/15 111/18 111/19 111/25 112/2 113/10 114/7 114/9 158/20 159/18 159/20 160/12 160/13 160/23 161/8 161/9 162/6 162/9 162/20 162/21 162/25 163/4	exited [4] 39/17 39/20 61/4 61/16
	enough [3] 32/24 150/15 155/2	exterminated [2] 9/22 13/8
	enraged [1] 62/25	experiential [1] 30/22
	escaped [2] 64/25 130/20	expert [3] 112/5 112/11 159/25
	essays [1] 125/17	expertise [2] 112/7 114/16
	etail [4] 34/9 34/10 34/15 128/22	explain [7] 23/12 43/22 44/11 45/21 115/1 115/15 150/16
	ester [1] 47/10	explained [1] 78/24
	entered [3] 54 19/14 61/25	explaining [1] 150/11
	etfire [2] 149/12 162/3	explanation [1] 17/1
	eternity [3] 36/20 56/14 108/8	exposure [1] 63/19
	etitled [4] 139/2 141/9 141/10 141/11	Express [3] 51/2 80/4 113/16
	etimating [1] 166/20	extended [2] 145/23 147/10
	ETSTEIN [2] 2/12 4/16	extent [1] 4/1
	equipment [5] 20/4 128/7 128/9 138/3 138/20	

E		
extra [1] 135/17	fast [1] 121/24	gave [8] 11/24 14/4 14/7 27/18 66/13 68/13 73/7 99/25
extract [1] 125/17	fat [2] 29/21 38/7	gearshift [1] 84/21
F	five [11] 19/12 23/19 52/9 62/1 63/5 104/24 185/1 185/4 119/1 119/20 147/20	Generally [1] 34/8
face [12] 18/10 23/5 82/4 102/14 103/14 105/18 105/21 106/3 121/23 124/7 125/3 125/4	fix [1] 116/24	generate [6] 34/25 117/6 125/21 125/23 142/23 143/14
facial [1] 124/13	Flanagan [4] 153 155 162/5 37/10	generated [9] 35/6 44/13 51/10 51/11 51/15 119/15
facing [3] 87/18 87/20 110/8	flack [2] 59/15 87/16	Germano [1] 57/7
fact [8] 21/16 21/21 23/8 124/18 152/10 153/11 166/4 169/7	flushed [3] 88/13 88/18 93/2	get [31] 10/16 12/11 27/1 39/9 43/9 49/1 51/7 62/8 62/9 65/16 81/11 82/5 88/9 88/15 92/9 93/19 93/20 95/24 97/18 103/7 105/21 122/16 132/19 137/15 137/21 139/19 153/11 154/2 169/11 170/5 170/23
facts [9] 87/4 21/12 42/12 44/4 44/17 100/1 116/14 153/3 153/4	flushing [5] 38/24 39/1 59/14 83/23 93/3	gets [3] 119/18 139/14 143/15
factually [2] 41/25 112/10	flod [1] 40/17	getting [1] 65/25
fail [1] 134/16	flipped [1] 161/13	girlfriend [12] 38/15 57/6 57/21 61/18 64/11 74/23 80/6 82/15 90/14 102/24 103/1 161/19
failed [1] 25/9	floor [3] 24/17 131/17 132/16	girls [1] 91/20
failing [1] 24/13	floored [1] 61/25	give [14] 6/13 10/13 14/14 16/13 25/21 44/7 69/1 71/13 104/21 136/24 143/8 146/9 153/2 156/4
failure [1] 135/24	Job [1] 113/21	given [13] 15/9 15/20 15/24 31/11 68/19 100/8 100/17 113/16 137/6 140/13 156/18 156/22 168/24
fair [5] 10/1 31/19 31/24 32/9 32/14	focused [1] 77/3	giving [3] 89/4 89/7 152/21
fairness [2] 12/7 155/12	Focusing [1] 102/3	go [22] 10/2 10/24 11/3 11/8 11/8 11/17 12/8 25/25 57/3 57/19 61/20 68/6 82/12 90/11 93/16 109/12 115/12 127/13 134/21 161/10 170/17 170/19
false [1] 87/2	follow [1] 92/8	godmother [1] 31/4
far [8] 7/3 16/24 124/16 136/11	followed [3] 57/23 58/25 81/1	goes [2] 146/1 154/21
Farthingdale [2] 57/8 91/2	following [4] 37/14 91/10 92/13 109/1	going [55] 5/12 6/12 9/15 12/14 13/23 14/3 15/6 17/19 26/8 29/8 32/21 41/23 42/18 44/7 45/15 46/24 58/25 60/9 60/16 61/13 61/14 61/15 61/24 62/16 64/23 71/17 72/6 72/8 73/2 75/7 84/22 84/23 85/9 92/20 107/19 112/4 112/13 112/16 116/11 117/12 122/14 125/25 131/23 133/20 135/5 136/20 137/13 147/18 147/24 148/9 150/19 155/6 155/9 165/21 171/7
fashion [1] 146/15	follows [4] 18/1 18/4 33/22 38/9	gold [1] 66/15
faxes [1] 51/14	food [2] 146/9 147/11	Goldstein [1] 117/1
fear [2] 62/16 62/25	for instance [1] 10/14	good [6] 3/1 4/20 4/21 26/1 138/1 148/9
fearing [2] 40/2 62/6	force [22] 17/4 35/11 35/12 35/19 36/5 36/12 36/24 37/3 38/1 38/3 38/5 43/25 44/14 44/16 114/22 115/2 115/6 122/4 136/12 146/9 163/2 172/13	got [33] 26/4 26/13 26/15 26/18 51/25 59/6 65/20 75/10 75/20 75/24 78/1 79/5 79/18 80/13 80/25 81/16 88/6 88/7 93/7 93/17 94/6 96/13 96/20 96/20 97/3 97/25 109/5 109/13 109/14 109/24 112/15 133/1 158/16
February [26] 18/4 19/2 20/1 21/15 22/2 22/16 36/21 37/2 57/4 57/6 70/21 72/3 74/12 77/21 79/13 80/2 82/21 86/10 87/6 90/10 90/20 90/25 110/23 114/24 144/8 157/12	forensic [2] 51/12 105/2	gotten [2] 71/22 72/14
February 27 [3] 19/2 36/21 37/2	Forest [2] 57/9 91/1	governed [1] 8/25
February of [1] 144/8	forever [1] 13/17	grabbed [1] 103/12
federal [1] 170/3	forgive [1] 9/19	grabbing [2] 96/4 129/18
feelings [1] 121/13	forum [19] 6/21 7/2 43/9 43/11 53/16 54/10 125/24 126/8 126/21 134/4 134/11 134/25 138/11 153/6 156/18 172/20 173/4 173/6 173/8	grammar [1] 29/10
feels [1] 137/5	formed [1] 30/19	Gramscio [1] 101/23
feet [8] 37/6 39/8 63/14 63/24 65/17 84/17 93/17 95/15	Formis [1] 6/18	grass [3] 76/18 109/16 109/25
fell [2] 40/13 85/25	forth [4] 3/5 9/25 81/11 156/23	green [1] 84/8
fellow [1] 102/8	forums [1] 167/3	ground [6] 65/20 65/24 66/1 88/9 150/8 165/9
felonies [1] 25/6	forward [17] 10/2 10/11 10/25 11/3 11/8 11/17 12/8 17/19 31/10 81/21 82/12 84/22 101/21 114/3 114/11 158/20 161/6	grows [2] 116/8 145/7
felony [4] 18/24 19/22 118/24 127/23	found [2] 28/23 38/7	grouped [1] 89/2
felt [6] 81/24 81/25 117/5 125/20 158/23 158/23	four [10] 8/6 48/2 62/1 66/19 81/24 94/17 94/17 122/23 144/11 158/22	guess [8] 8/23 9/15 15/10 139/3 142/8 151/23 156/14 157/11
female [3] 38/22 60/10 66/20 87/22 87/23 88/5 88/15 96/24 97/23	four-page [1] 8/6	guide [1] 38/4
Ferguson [3] 104/20 105/6 105/9	fracture [5] 123/24 124/8 124/8 124/12 124/12	guilty [1] 20/23
few [2] 147/18 159/1	fragments [2] 124/9 124/13	gun [42] 27/13 63/5 64/5 65/1 65/5 65/11 66/6 66/21 66/24 67/2 76/4 76/11 82/3 82/11 85/14 85/15 87/12 87/14 87/15 87/16 95/23 96/1 96/7 97/19 97/21 98/16 102/10 105/17 105/19 110/5 110/15 116/22 121/17 121/20 121/24 125/3 129/18 129/25 130/11 130/21 164/18 164/24
figure [1] 59/11	FRANKLIN [2] 1/8 2/7	gunshot [1] 87/10
figuring [1] 148/8	frankly [2] 32/6 145/24	
file [2] 27/10 69/10	friend [3] 31/4 36/19 86/19	
filed [4] 10/16 11/20 152/4 152/7	front [13] 61/5 62/12 65/21 81/14 83/10 84/17 85/2 85/18 87/11 88/12 94/24 132/12 163/24	
final [1] 52/10	fuck [2] 97/15 103/3	
find [5] 11/13 21/19 25/16 38/19 148/9	fucking [5] 60/15 60/16 61/14 81/9 157/9	
findings [2] 120/5 124/20	full [1] 114/5	
fine [7] 48/3 137/21 148/12 156/8 168/6 169/22 170/12	function [1] 141/5	
finish [1] 91/15	fundamental [2] 11/25 155/12	
finished [1] 58/9	Further [1] 26/11	
fire [6] 63/3 63/6 63/13 81/23 158/22 165/17	furtiveness [1] 167/7	
firearms [1] 140/14	Furtiveness [1] 24/6	
fired [13] 19/11 22/21 26/22 27/6 40/2 63/1 63/9 81/25 85/1 88/25 119/1 158/23 164/18	G	
fired [1] 105/11	G25X [1] 108/22	
firing [4] 23/19 63/17 164/23 167/19	Gallop [1] 101/14	
firm [1] 4/17	game [1] 87/8	
first [23] 6/5 17/12 32/19 32/20 33/5 33/19 35/15 56/15 58/3 63/13 67/17 70/11 72/5 73/19 90/24 95/22 101/20 120/8 123/1 129/12 137/19 143/6 163/12	GARDEN [2] 2/16 4/19	
fit [1] 127/3	gas [2] 105/22 160/16	
	gasoline [4] 113/20 114/7 114/8 160/13	
	gathered [1] 51/15	

G	93/24 113/21 161/21 be [238] be's [13] 13/8 79/18 102/12 102/13 102/15 103/13 129/22 139/2 141/10 141/19 141/24 165/2 167/24 head [8] 65/2 76/14 92/6 95/4 102/14 127/4 128/17 130/22 headed [2] 62/19 63/4 heading [1] 84/10 headlights [2] 38/24 39/1 hear [21] 4/2 9/23 28/24 21/14 22/1 22/8 22/18 22/24 23/4 24/19 29/4 30/24 42/10 42/11 66/16 93/22 94/20 161/8 161/16 161/19 162/11 heard [27] 5/6 41/14 76/13 76/14 85/4 85/13 85/14 85/18 85/19 87/9 87/9 88/25 94/25 95/1 95/4 95/11 96/24 101/21 109/25 110/3 110/8 145/12 155/2 162/14 162/19 162/21 162/24 hearing [77] 1/14 2/3 3/3 3/4 3/7 3/8 3/18 3/22 5/12 6/6 6/7 8/10 8/13 8/24 9/14 10/22 11/16 11/18 11/22 14/15 14/16 15/20 21/4 25/1 25/15 27/24 28/1 28/5 28/13 28/15 28/16 30/11 30/13 30/17 30/18 31/18 32/15 35/21 42/4 42/14 46/17 49/19 53/5 53/11 55/3 55/6 55/11 56/3 69/4 69/5 69/19 72/2 72/4 72/6 72/17 72/25 73/4 73/10 94/15 100/24 104/3 104/13 107/21 122/10 126/3 131/25 135/7 137/6 137/8 145/14 147/16 150/11 150/12 150/22 154/7 173/1 173/2 headings [5] 12/5 12/22 73/24 121/21 122/5 hearsay [4] 4/10 28/3 28/18 41/23 hearty [2] 29/8 42/12 held [4] 3/8 101/9 104/3 104/14 help [1] 115/18 helping [1] 96/12 Hemphill [3] 111/21 160/4 161/5 her [32] 28/7 28/8 30/9 30/10 30/15 31/7 33/5 42/2 42/3 42/19 44/4 60/11 66/14 66/23 66/25 67/2 74/23 80/7 80/9 93/7 97/5 103/5 107/9 116/9 121/25 128/11 136/21 147/25 147/25 155/7 159/25 160/6 here [20] 5/11 5/15 9/20 32/8 42/10 42/11 44/3 44/3 72/13 77/18 86/7 106/19 107/20 110/20 132/23 137/14 150/24 159/14 167/25 171/9 heretby [1] 174/4 heroin [2] 33/19 87/2 hesitation [1] 89/3 hidden [1] 64/1 high [10] 29/10 29/16 30/21 59/14 59/15 80/13 83/14 83/19 83/22 83/23 high-ranking [2] 29/18 30/21 higher [1] 99/3 higher-ranking [1] 99/3 highway [1] 101/12 HULLER [7] 2/9 4/25 17/23 33/5 33/23 172/4 172/8 Hills [2] 80/22 92/15 him [86] 9/21 13/10 13/15 13/18 17/2 18/12 22/14 23/3 25/2 25/11 26/13 26/17 26/17 40/4 40/12 59/10 60/19 60/20 60/24 61/3 63/11 63/19 64/10 64/21 65/4 65/4 65/9 65/22 65/23 66/7 67/1 67/10 67/11 68/6 68/13 78/12 80/14 82/1 84/2 86/3 90/18 90/19 92/8 92/9 93/16 96/22 97/2 97/15 97/17 97/19 97/19 98/15 103/18 109/12 117/20 121/20 125/2 125/3 129/16 129/23 129/24 129/25 130/22 138/20 138/22 138/22 139/5 140/18 140/20 140/22 141/18 141/22 142/5 142/6 145/17 145/25 151/12 151/15 152/13 157/8 157/16 158/24 167/10 171/5 171/11 171/13
gunshots [4] 76/13 95/1 95/2 110/4 gray [31] 66/4 67/1 67/2 76/10 80/14 81/7 81/12 81/13 81/17 81/19 81/21 81/23 82/1 82/5 82/10 84/18 84/25 85/7 85/13 85/17 85/23 85/24 102/1 102/4 105/14 153/11 157/6 158/17 158/18 158/20 158/22	H habit [1] 156/11 had [86] 12/17 13/24 13/25 14/19 22/12 26/12 27/14 29/21 29/22 39/19 46/14 51/6 55/10 57/13 57/15 58/9 61/9 64/8 68/17 68/19 72/4 75/9 75/10 77/6 77/9 80/6 80/7 80/19 82/11 82/13 87/22 88/18 88/19 90/11 90/18 91/3 91/3 91/4 91/5 91/6 91/12 91/13 91/13 91/14 91/18 91/19 91/20 91/23 91/24 91/25 93/2 94/10 95/8 95/11 95/13 96/1 97/2 97/19 98/1 98/14 98/15 99/7 103/8 103/8 106/9 106/12 106/13 110/17 111/13 111/22 114/22 123/24 129/18 129/24 129/25 130/10 130/15 130/12 144/10 150/25 151/6 152/13 152/24 161/16 162/16 165/2 hair [7] 34/4 57/18 58/17 91/17 106/21 106/24 144/2 hand [29] 39/7 55/21 56/4 61/7 61/9 61/10 64/18 65/1 65/2 65/11 76/2 76/11 88/18 95/20 95/23 96/2 96/3 96/6 103/13 110/5 129/18 129/19 130/12 130/15 130/18 130/21 130/23 135/21 174/8 headed [1] 8/9 headgear [1] 141/24 heading [5] 36/2 46/22 46/23 49/24 54/4 hands [3] 71/6 94/14 103/8 hang [1] 90/17 hanging [2] 13/17 85/24 Hans [4] 58/4 58/10 58/15 91/12 happen [4] 11/2 167/10 167/11 167/15 happened [16] 13/4 28/13 66/25 83/12 83/12 94/10 94/10 97/24 98/19 98/21 102/7 105/13 119/16 119/24 127/17 134/24 happening [2] 9/6 28/4 happens [4] 9/12 16/23 17/8 160/18 hard [2] 79/6 79/17 harm [1] 63/11 has [33] 3/12 8/10 11/6 16/2 25/1 30/13 30/19 31/10 32/6 32/11 33/5 36/9 42/6 46/20 46/21 49/19 50/6 53/8 72/17 72/23 73/20 82/18 102/12 114/9 114/17 122/25 131/24 135/16 139/14 141/12 152/7 165/13 169/6 hat [2] 138/8 138/9 Hawpunge [1] 101/13 Hans [2] 57/9 91/1 have [112] 3/3 4/12 4/23 5/5 5/7 5/9 6/1 6/2 6/5 6/8 8/20 9/1 9/20 11/4 12/1 12/17 12/21 13/12 13/15 15/21 16/15 16/18 17/14 29/8 29/9 32/14 34/2 37/24 46/1 47/9 48/6 48/13 55/10 55/21 56/21 57/19 60/23 61/9 68/2 73/12 73/15 73/16 77/16 78/5 78/11 78/12 78/19 78/24 82/17 86/5 86/25 88/19 89/11 89/13 90/3 91/25 95/7 96/21 100/8 100/12 100/16 100/17 106/6 106/20 106/22 110/7 110/18 112/25 114/13 115/7 115/8 117/13 117/19 120/21 122/4 123/1 125/9 132/12 132/17 135/3 135/6 135/17 135/21 136/5 137/1 137/6 138/17 138/24 139/2 139/7 139/11 139/14 140/9 141/7 141/13 146/25 146/25 147/3 150/16 152/20 154/18 154/24 154/25 156/3 156/10 160/2 161/5 165/17 166/14 170/2 170/4 170/21 haven't [2] 69/8 69/20 having [9] 33/19 44/2 60/20 79/2 80/9 86/16
	I I [4] 71/13 108/6 118/2 126/11 I [16] 4/13 10/13 47/14 49/22 73/2 73/5 73/5 74/7 101/18 117/14 122/16 136/24 148/9 148/17 160/7 164/16 I'm [68] 8/15 9/9 9/15 10/5 14/12 14/25 15/16 17/7 17/23 20/7 20/8 22/21 32/13 32/21 61/14 73/2 76/3 77/1 107/19 107/20 111/20 112/4 113/2 116/11 117/11 117/16 117/19 120/8 120/11 122/3 122/9 122/22 122/22 122/24 125/25 131/3 131/24 133/19 135/5 136/20 138/5 139/3 147/24 149/14 150/9 150/19 152/10 153/6 153/16 153/17 153/22 157/8 160/5 164/6 164/15 164/20 165/7 165/15 165/21 165/23 166/7 166/8 166/11 167/16 168/7 168/11 171/6 171/10 I've [6] 8/8 14/11 71/22 72/13 72/12 155/2 IAU [4] 36/15 56/19 144/1 147/2 IAU-27-2010 [1] 56/19 IAU27 [1] 89/25 IAU27-2011 [1] 89/25 ID [1] 95/9

I	idea [2] 60/20 102/6 identification [1] 134/6 identified [3] 38/20 39/18 66/5 identity [2] 46/19 103/22 identity [1] 98/21 IEU [1] 41/9 ignore [1] 61/3 ignored [1] 64/15 II [3] 79/11 101/4 104/9 illness [1] 90/21 immediately [8] 61/25 63/25 65/20 77/8 87/25 95/2 95/3 97/12 impacts [1] 51/4 impaired [1] 63/21 important [1] 10/23 impossible [2] 29/2 30/16 impression [1] 124/11 imprecise [4] 31/9 32/6 73/23 112/10 inappropriate [4] 30/15 31/8 31/17 41/25 incident [58] 7/13 18/15 21/3 22/15 22/19 26/2 27/23 29/19 32/5 34/20 35/8 35/11 35/12 35/20 36/25 37/4 37/13 38/9 38/23 44/19 44/23 49/13 49/18 50/2 52/16 59/18 63/22 67/12 67/15 68/15 70/21 70/25 93/1 98/25 99/6 100/2 100/7 111/16 115/5 115/22 119/9 121/1 125/6 127/7 128/25 131/6 133/13 134/19 135/6 138/16 142/24 144/7 144/12 155/20 157/11 159/2 163/2 172/18 Incident/Accident [1] 70/21 include [1] 139/10 included [2] 6/22 7/3 includes [2] 119/8 127/6 including [3] 22/10 23/10 63/11 inaccessible [1] 73/12 inconsistent [1] 31/11 increases [1] 114/8 independently [1] 166/23 INDEX [1] 172/1 indicate [2] 107/4 113/25 indicated [8] 11/1 106/14 123/25 124/5 144/1 149/24 157/14 168/22 indicates [1] 156/22 indicating [1] 162/16 individual [7] 26/7 30/19 31/15 140/8 143/1 152/20 168/1 individuals [6] 27/17 29/5 29/13 58/12 67/22 156/18 infants [8] 57/22 74/24 81/6 83/20 87/19 105/15 108/22 157/6 influence [1] 153/3 information [18] 31/10 32/7 37/22 43/9 50/21 113/8 115/8 119/8 119/18 127/6 133/11 informed [1] 67/10 inherent [1] 164/23 initial [2] 114/4 120/5 initiated [6] 78/6 78/14 80/21 88/23 83/16 89/13 initially [1] 93/15 initials [3] 78/10 78/22 79/18 initiate [1] 157/19 injure [1] 26/9 injured [1] 71/4 injuries [1] 64/11 injuries [5] 40/22 40/22 41/2 71/6 71/7 injury [2] 23/7 23/9 inquire [1] 155/13 inquiries [1] 72/4 inquiry [1] 71/23 inside [4] 20/13 96/5 134/18 136/19 insignia [1] 68/1	inspector [20] 1/13 2/3 3/2 4/20 8/24 15/4 15/5 27/24 28/16 29/2 37/9 47/9 48/1 143/13 143/24 155/5 156/6 156/7 165/24 169/21 inspectors [2] 29/10 30/1 instance [4] 10/14 138/21 152/23 169/15 instead [2] 15/20 23/14 insurance [1] 163/18 intake [1] 63/21 intend [2] 31/22 146/12 intending [1] 152/8 intent [3] 9/24 23/7 165/19 intention [1] 96/12 intentionally [6] 19/7 23/18 116/16 116/20 118/25 127/1 interject [1] 141/22 interjecting [1] 147/15 interval [22] 7/6 21/1 21/5 29/25 30/4 30/13 32/8 32/17 33/13 33/25 34/3 45/16 53/13 56/17 89/10 89/23 142/18 142/20 146/4 146/12 149/13 159/9 interrupt [2] 122/13 148/5 intersection [1] 39/12 interview [7] 100/2 144/17 144/23 145/18 145/25 146/5 159/6 interviewed [16] 27/21 29/13 30/7 68/12 99/23 100/13 116/25 144/21 146/14 149/4 149/7 149/12 149/15 151/10 151/16 159/8 interviewing [1] 146/11 interviews [5] 37/23 44/21 44/22 100/15 159/12 intoxicated [2] 77/12 110/16 investigate [2] 21/2 34/20 investigated [1] 37/4 investigation [44] 21/6 34/13 35/1 35/4 35/8 35/20 36/13 36/25 37/18 37/20 38/1 41/1 41/9 42/24 43/15 44/12 45/16 45/23 48/19 49/2 50/14 50/22 51/7 111/3 111/11 117/4 120/10 120/13 120/24 125/19 127/25 128/20 128/22 131/9 131/21 133/1 136/9 142/9 142/24 143/22 143/23 144/14 144/17 149/13 investigations [4] 34/6 34/8 34/10 34/15 investigator [3] 49/3 51/8 132/20 investigators [2] 37/23 100/15 invited [1] 90/19 involuntary [1] 147/8 involved [7] 22/14 37/13 38/3 38/7 38/22 67/10 70/22 involvement [1] 17/6 involving [3] 22/15 22/19 142/24 irrational [1] 61/23 irrelevant [9] 42/1 42/10 44/5 45/7 116/10 136/22 145/9 166/2 167/24 is [245] Israel [1] 164/22 Israel [2] 2/20 5/23 issue [2] 10/8 16/19 issued [14] 16/1 20/5 138/4 138/17 139/16 139/20 139/21 140/4 140/20 140/22 141/17 142/2 142/4 168/23 issues [4] 6/3 38/3 139/5 166/25 it [219] it's [56] 9/17 10/22 11/6 13/4 16/4 29/7 30/16 36/12 41/24 42/9 43/13 44/8 45/6 71/11 72/19 73/1 73/11 75/21 78/1 78/6 79/5 79/7 79/17 82/25 86/21 89/21 101/17 104/4 107/23 111/19 112/9 112/10 113/3 115/3 126/18 131/19 132/24 136/24 138/19 139/23 141/17 145/8 145/13 146/1 150/4 151/5 155/16 156/9 156/17 163/9 164/11 166/1 167/2 169/12 169/12 169/22 item [2] 14/13 15/17 Items [10] 35/14 40/6 48/9 58/16 58/20 52/17 56/3 56/5 115/16 115/17	it's [2] 36/19 60/7 64/7 108/8 109/19 110/1 111/7 111/14 111/24 112/1 113/9 159/18 itself [3] 99/7 123/25 164/11 ITU [1] 37/10 J J-O-B-E-N [1] 8/4 J-O-H-N [1] 8/4 Jail [1] 85/9 Jameson [1] 57/14 jeopardy [2] 10/8 12/2 Jericho [5] 59/1 59/7 75/3 92/9 92/19 Jim [8] 67/5 94/9 108/19 108/20 109/2 109/3 109/14 109/25 Jillian [13] 7/21 53/19 54/13 57/7 74/14 75/22 77/20 90/12 116/2 119/12 121/5 127/11 172/21 Jim [1] 98/25 Jo [12] 20/24 33/8 33/13 87/1 89/8 89/18 100/21 107/11 145/10 171/15 171/19 172/7 Jo-Anne [11] 20/24 33/8 33/13 87/1 89/8 89/18 100/21 107/11 171/15 171/19 172/7 Jo-Anne's [1] 145/10 Joanne [3] 2/24 5/20 107/8 John [1] 8/3 John [8] 36/23 37/8 37/11 41/6 101/3 101/6 104/8 184/11 Join [2] 90/19 94/7 Judge [3] 156/5 156/6 156/11 judgment [1] 42/15 Judith [1] 101/14 judicial [1] 11/13 Julie [1] 57/14 July [3] 3/6 79/23 101/9 July 23 [1] 3/6 June [4] 34/24 45/12 142/22 144/14 June 6 [1] 45/12 June 6th [1] 142/22 June 7 [1] 34/24 just [54] 5/3 6/2 8/17 12/19 12/19 13/16 13/20 14/1 15/12 17/13 25/21 32/15 33/24 47/10 47/14 69/21 70/11 73/21 97/15 101/18 102/17 102/21 106/2 111/6 112/9 112/16 117/17 122/14 133/11 135/23 137/1 138/5 139/4 141/13 141/18 142/13 146/15 147/18 148/3 148/23 149/16 151/5 151/5 155/11 156/4 158/11 159/20 161/13 162/14 163/4 164/17 165/24 166/9 170/25 justification [4] 18/9 164/12 165/13 167/7 justified [3] 164/23 164/22 167/19 K K-L-O-G [1] 8/2 K-R-I-S-T-I-E [1] 7/23 Karen [2] 2/22 5/13 KEARON [2] 2/12 4/17 keep [2] 71/16 90/22 keeping [2] 61/10 147/10 keeps [1] 109/22 kept [1] 61/19 key [1] 113/21 key [6] 61/13 61/15 61/24 64/10 64/23 64/4 kind [4] 28/23 102/10 139/22 142/7 King [13] 8/2 46/11 53/1 53/25 86/13 86/14 86/15 89/15 116/1 119/12 121/4 121/5 127/11 King's [2] 54/22 172/24 know [5] 59/5 152/10 152/12 154/4 154/4 knocked [2] 82/10 88/9 know [55] 15/7 32/8 45/3 57/8 57/15 58/3 58/24 59/11 65/11 66/12 67/25 69/14 71/22 72/18 73/9 74/23 76/13 82/11 84/22 94/11 95/6 97/2 98/7 98/21 99/5 100/5 101/22
---	---	--	--

K	Lieutenant [2] 68/24 143/21	4110 47/18 47/21 48/6 49/23 50/3 50/7 53/11
know... [28] 101/25 102/4 102/11 103/4	lie [10] 40/2 40/23 63/1 165/20 166/3 166/15	54/8 54/10 54/13 54/17 54/19 54/22 54/25
105/1 109/5 110/4 110/6 110/9 114/21	167/21 167/23 168/3 168/15	55/4 55/7 55/12 56/4 107/22 108/1 117/17
114/22 116/23 116/23 121/21 121/21 121/23	lie [2] 84/5 84/8	117/18 118/6 118/12 123/7 123/10 126/4
127/24 130/12 132/22 139/13 145/16 146/16	lie [5] 88/11 88/18 93/2 93/3 113/24	126/8 131/25 132/5 132/9 133/22 134/4
153/20 153/25 154/6 154/12 155/4 155/23	like [21] 10/13 11/11 13/3 16/10 16/11 35/22	135/8 135/9 135/12 135/22
knowledge [7] 42/13 105/4 106/6 135/2	36/1 41/13 46/16 53/3 55/10 55/13 55/14	accident [1] 91/6
135/3 150/21 160/6	69/15 72/18 106/3 109/11 110/14 111/19	adder [7] 100/24 104/4 152/11 152/16
known [1] 154/18	130/8 169/11	154/16 155/11 174/5
Kristie [14] 7/23 46/10 52/25 53/23 54/19	limit [1] 63/18	action [1] 166/20
80/7 83/1 86/9 116/1 119/11 121/4 121/24	limited [2] 3/19 23/10	any [12] 4/12 4/23 6/1 15/20 56/25 61/9
127/10 172/23	line [2] 60/3 62/14	88/19 90/7 91/25 141/21 153/10 167/8
Kronmiller [1] 142/23	list [3] 14/5 107/20 171/3	maybe [4] 10/1 102/19 168/11 170/4
L	listed [1] 37/4	McQuade [3] 99/2 99/19 100/4
L-E-S-L-Y [1] 5/1	literally [4] 29/1 145/19 146/2 152/25	me [137] 4/7 17/13 17/20 23/21 26/24 35/14
Laboratory [1] 51/13	litigation [1] 166/25	46/8 48/11 57/1 59/1 59/14 60/7 60/9 60/12
Lamb [2] 101/5 104/10	little [6] 47/15 83/17 144/13 158/15 170/5	60/12 60/21 61/2 61/6 61/7 61/24 62/5 62/12
lane [5] 60/1 60/3 87/18 95/14 96/19	170/8	62/16 62/20 62/23 62/25 63/8 63/14 63/19
lance [1] 60/4	live [4] 74/16 79/25 83/3 108/15	64/10 64/24 65/1 65/15 65/17 65/22 66/4
language [1] 93/23	living [1] 87/8	66/7 66/8 66/17 66/21 66/24 66/25 67/1 67/5
large [1] 88/19	LLP [1] 2/12	67/20 67/23 68/6 69/24 71/8 71/8 72/16
last [9] 53/8 58/9 58/22 74/18 74/23 77/10	loaded [1] 96/7	72/24 73/5 73/21 79/3 79/6 79/12 79/17 80/7
85/21 104/21 108/17	located [3] 26/21 59/23 63/25	80/9 80/12 80/17 80/18 80/25 81/10 81/25
later [9] 31/5 38/20 47/15 93/12 94/21 105/3	location [2] 22/9 71/2	82/4 82/5 82/21 86/10 89/11 90/8 91/10 92/8
129/20 158/15 159/16	lock [2] 95/5 169/10	92/13 93/2 93/6 95/8 96/17 96/17 97/16
law [16] 3/10 4/17 10/21 18/20 19/18 24/3	locked [2] 27/1 27/1	97/16 97/18 97/20 97/23 98/1 98/6 98/8
24/9 25/6 38/6 46/3 78/9 87/4 118/23 120/22	locking [1] 95/12	98/13 98/14 98/15 98/17 98/18 98/20 98/20
121/14 126/24	long [1] 34/2	99/4 99/7 99/15 102/7 102/9 102/10 102/13
lawful [4] 23/14 24/23 27/2 169/5 169/12	look [7] 66/9 66/11 74/7 129/11 135/4 155/25	102/13 102/15 103/12 103/13 104/21 105/18
169/18	163/18	105/20 105/21 106/3 107/12 110/23 111/12
lawn [1] 88/23	looked [13] 14/4 14/8 60/19 66/9 76/21 85/6	115/11 115/23 117/2 122/17 129/1 138/1
lawsuit [6] 152/13 152/24 153/1 153/15	87/10 87/25 88/22 89/1 95/10 109/11 111/10	142/7 142/13 143/14 152/16 153/8 156/5
154/1 154/4	looking [4] 14/12 15/16 117/17 120/9	157/1 158/11 158/18 158/23 164/7 164/21
lawyer [7] 31/15 78/12 78/15 78/16 78/19	looks [3] 16/10 16/11 110/14	168/10 169/22 170/11 171/1 171/21
78/21 145/24	lose [2] 65/12 131/15	metes [1] 79/3
lead [1] 59/1	losing [1] 128/17	metre [8] 16/10 73/9 112/12 117/14 138/6
leaked [7] 32/7 32/9 72/23 72/24 73/1 73/13	lost [12] 38/17 59/5 97/21 98/1 98/16 109/7	138/12 166/12 167/11
73/18	120/12 128/15 129/25 133/8 138/8 153/8	meaning [1] 3/24
leading [1] 73/20	lot [4] 57/25 58/21 80/10 84/23	meets [1] 170/3
learned [1] 102/12	low [1] 31/1	metre [1] 82/12
learning [1] 65/3	low-ranking [1] 31/1	metre [1] 124/8
learn [5] 60/15 81/9 84/14 104/1 157/7	lunch [4] 73/2 74/7 106/18 106/25	metre [4] 18/13 99/13 123/17 127/9
learned [3] 41/25 46/12 94/21	M	meeting [2] 90/24 120/1
least [8] 14/25 40/3 91/4 98/19 99/22 106/3	M-O-N-D-O [1] 7/23	member [5] 14/17 15/22 21/16 70/22 119/16
122/25 145/16	M-O-R-O-U-G-H-A-N [1] 7/17	members [8] 15/18 15/24 16/16 16/18 34/17
leave [5] 13/9 13/17 38/17 103/2 170/4	mad [1] 88/15	37/4 147/2 171/2
leaves [1] 145/10	made [24] 4/6 7/4 30/15 39/5 39/14 53/19	Measur [1] 101/12
learning [1] 58/21	53/22 57/3 69/6 75/4 77/6 87/2 88/12 90/11	measures [1] 130/14
led [3] 116/3 124/22 129/8	92/14 92/16 121/25 122/5 124/17 147/2	mere [1] 164/10
Lee [1] 101/11	151/6 153/14 155/16 155/24	merely [1] 10/16
left [21] 41/20 57/19 58/22 61/9 64/18 71/6	made [1] 72/14	merged [1] 92/14
71/6 77/7 80/14 88/21 91/8 91/8 91/16 94/6	main [3] 59/3 59/4 59/6	met [2] 57/1 91/1
103/13 108/25 124/7 124/9 124/11 124/14	make [18] 10/21 17/13 29/5 30/17 42/5 42/14	MICHAEL [5] 1/13 2/3 3/2 68/5 68/22
131/17	43/16 62/10 75/8 119/21 120/14 123/20	mid [2] 81/8 157/7
left-sided [1] 124/11	135/25 147/19 150/25 151/17 168/6 170/8	mid-twenties [2] 81/8 157/7
leg [1] 71/7	making [18] 29/17 34/10 56/20 80/11 90/1	middle [5] 75/6 76/21 76/23 87/13 146/7
legal [9] 2/20 2/21 2/22 2/24 5/2 5/14 5/24	90/15 110/12 128/13	midline [1] 61/8
17/24 166/20	male [3] 87/22 93/20 98/5	might [5] 15/8 21/19 110/7 156/10 165/18
legally [1] 141/19	man [8] 61/22 62/25 64/14 87/11 87/14 88/3	Mike [4] 67/9 67/12 67/19 98/22
lengths [4] 62/2 94/17 94/18 95/13	88/11 88/17	mill [1] 124/12
LESS [3] 2/9 4/25 17/22	manipulated [1] 95/24	Mother [4] 67/23 68/18 99/14 108/16
Lesser [5] 79/11 79/14 82/22 101/4 104/9	manipulated [1] 10/22	million [4] 152/14 153/1 153/11 154/2
let [16] 8/8 17/13 25/21 33/4 35/17 46/22	master [4] 26/14 31/21 32/2 113/18	million [1] 154/12
49/15 50/5 51/17 55/16 107/3 115/11 138/1	may [4] 44/22 76/13 110/4 167/6	mind [2] 21/19 79/2
142/7 148/17 168/10	Marrone [5] 67/18 98/17 171/5 171/9	mine [1] 42/6
let's [6] 16/22 47/1 70/2 70/3 155/17 155/25	171/10	MINEOLA [4] 1/9 2/8 72/17 104/15
letter [1] 20/22	MARCH [6] 1/10 7/7 53/14 54/1 56/15 89/21	minute [2] 60/5 70/4
level [1] 114/8	March 13 [7] 54/1	minutes [5] 32/24 58/15 66/19 147/18 147/20
Lewis [1] 31/2	MARRON [2] 27/2 47/6	minutes [1] 93/11
license [2] 66/2 66/14	match [8] 36/4 47/17 50/1 54/5 107/25 118/4	mischievous [2] 19/21 24/2 25/4 46/2 46/5 52/8
lie [1] 154/18	123/5 126/7	55/25 115/15 115/20 116/5 116/19 117/6
	marked [44] 36/1 36/6 36/9 46/17 46/25 47/3	117/25 118/23 136/7 165/5 165/13 165/14
		166/23 167/25 168/14

M	N	
misconduct [1] 34/16	name [11] 4/17 5/17 17/22 33/10 58/ 58/19	24/3 28/23 23/11 23/10 23/13 24/22 25/11
misdeemeanor [3] 87/3 126/25 127/22	67/25 74/24 80/7 86/15 109/5	28/21 28/22 29/7 30/21 32/15 37/24 42/7
misread [1] 14/11	named [1] 108/19	42/10 44/4 44/17 44/21 44/21 44/22 45/8
misunderstood [1] 182/19	narrative [1] 100/10	56/22 56/25 57/14 58/2 58/8 58/24 59/15
Missed [1] 14/21	naval [3] 123/24 124/7 124/11	59/15 60/12 60/24 60/25 61/8 61/17 62/10
mixed [4] 91/5 91/6 91/19 91/24	NASSAU [35] 12 1/7 25 5/1 5/13 6/18 7/2	62/21 62/22 63/11 63/16 63/20 64/11 64/22
Monday [1] 15/7	7/5 14/25 17/23 21/17 27/19 29/15 30/23	65/4 65/11 65/12 66/12 66/16 67/14 67/25
Mondo [12] 71/23 46/10 52/25 53/24 80/7	31/2 31/13 35/7 54/4 55/6 67/17 70/20 89/9	68/2 76/3 76/4 77/1 77/10 77/12 88/14 88/17
83/1 86/9 116/1 119/12 121/4 121/25 127/10	100/6 101/1 101/2 104/3 104/6 104/7 104/14	90/3 90/7 91/15 92/20 93/3 93/22 94/20 95/6
Mondo's [2] 54/19 172/23	121/22 152/1 152/14 154/3 173/2 174/5	95/7 96/21 96/22 96/25 97/1 98/18 98/24
months [2] 144/11 144/15	nature [3] 72/5 139/2 141/8	99/5 99/6 99/11 100/5 100/8 100/16 100/17
more [16] 9/24 9/25 21/18 28/19 44/2 60/24	navigating [1] 39/4	105/5 110/7 110/16 111/18 111/20 111/24
63/6 63/18 67/24 100/22 114/16 144/13	NCPD [1] 3/15	113/2 113/16 114/25 121/5 121/14 122/16
149/16 151/17 151/19 153/10	near [5] 81/22 94/1 94/7 94/12 158/21	127/24 130/12 138/2 138/23 138/23 138/25
morning [8] 3/2 4/20 4/22 22/3 22/16 26/1	necessary [2] 4/2 4/8	139/11 139/12 140/22 141/7 141/17 141/22
135/19 145/21	neck [4] 64/1 88/20 98/3 109/23	142/4 142/6 146/13 147/4 149/14 150/9
Morroughan [93] 7/16 7/20 18/9 18/16 19/10	need [10] 6/9 17/1 60/15 70/1 115/17 129/10	151/5 151/14 151/15 152/10 153/7 153/16
20/12 22/23 23/5 23/8 23/9 23/24 26/2 26/4	129/11 139/1 163/6 171/10	153/22 154/6 154/13 159/5 160/2 162/21
26/8 26/12 26/16 26/18 26/25 21/5 27/6 27/9	needed [2] 92/24 93/9	164/10 164/17 164/20 164/23 165/16 165/23
27/11 28/12 28/13 31/5 31/15 38/21 38/24	needs [1] 160/13	166/2 166/7 166/11 166/16 166/17 167/4
39/3 39/10 39/13 39/15 39/19 39/20 39/23	negate [1] 17/2	167/15 167/25 168/14 168/18 169/10 169/16
40/4 40/5 40/14 40/17 40/18 41/1 45/1 46/10	neglected [1] 107/18	169/17 169/18
52/25 53/22 54/3 55/4 55/7 79/16 82/20 83/5	Neh [1] 143/24	notary [8] 33/21 77/22 86/11 101/14 104/17
100/25 101/7 101/17 104/5 104/13 104/20	neutral [1] 114/11	171/25 174/3 174/16
116/1 119/11 121/4 121/7 121/18 122/12	never [7] 60/11 60/11 77/14 85/15 90/18	note [2] 14/24 42/21
123/18 123/21 124/17 124/25 125/17 127/1	96/20 96/20	noted [1] 43/6
127/9 127/10 128/17 129/17 129/19 130/10	NEW [47] 1/2 1/9 2/8 2/16 3/9 18/6 18/18	notes [1] 174/7
130/11 130/22 133/7 149/25 150/14 151/6	18/20 19/4 19/8 19/18 20/3 22/6 24/3 24/8	nothing [4] 31/14 44/2 67/24 165/14
151/9 151/22 151/25 152/24 153/15 154/11	33/21 37/1 37/7 38/6 38/13 46/2 51/2 70/20	notice [12] 11/4 14/14 15/13 15/18 16/13
155/19 157/14 158/25 161/16 162/5 168/19	74/17 77/25 79/15 79/25 80/22 86/18 87/5	59/14 59/16 64/11 73/24 101/13 152/4 152/6
Morroughan's [14] 18/12 20/14 23/20 24/17	89/7 89/16 91/2 101/13 101/15 104/15	notified [2] 15/21 100/6
32/10 40/12 54/16 79/8 121/21 124/19 127/4	104/18 118/22 119/2 120/22 126/23 127/2	notify [3] 67/11 171/5 171/11
152/12 155/3 172/22	134/18 141/16 141/17 174/3 174/16	November [2] 6/8 49/21
most [2] 75/16 124/14	Newsday [6] 32/9 71/19 72/5 72/15 73/8	November 15 [1] 6/8
motive [1] 152/20	73/13	now [21] 3/3 10/2 39/10 40/6 47/10 57/8
motor [2] 39/13 114/4	Newsday's [1] 73/22	59/11 73/15 78/12 78/18 79/3 84/4 113/25
motors [1] 113/20	next [29] 15/7 26/3 59/25 60/7 60/8 74/9	120/8 125/16 137/14 143/2 144/1 149/24
move [12] 35/23 63/16 64/5 88/2 88/4 88/14	75/12 75/25 77/14 77/15 77/23 79/18 81/6	154/22 159/17
101/20 133/20 137/9 155/17 161/6 161/25	82/23 84/13 84/19 86/12 89/19 100/22	now, [1] 60/17
move, [1] 62/18	102/11 104/2 105/13 109/8 110/11 119/16	number [39] 5/4 14/7 18/2 18/19 19/9 19/25
moved [5] 55/13 55/14 76/17 109/20 162/16	155/17 157/1 157/15 165/22	27/19 30/21 33/10 33/16 37/15 37/15 37/16
moves [1] 114/3	night [12] 29/15 30/2 74/18 77/10 92/6	37/17 46/20 46/21 58/24 52/6 52/9 55/12
moving [9] 10/6 10/10 19/15 35/15 63/7 76/4	108/17 110/16 145/19 146/7 146/17 155/20	56/18 56/19 78/1 86/20 86/21 86/24 113/14
77/1 77/4 120/7	162/22	118/3 125/12 131/19 131/24 135/7 136/3
Mr. [33] 18/11 23/7 23/9 23/23 24/17 25/25	nights [1] 146/16	136/7 136/8 149/15 156/3 163/8 163/14
53/1 86/14 101/23 104/20 105/6 105/9 117/1	niac [1] 7/14	unacross [4] 49/8 121/23 125/4 127/13
123/21 124/25 127/11 127/4 127/9 128/16	no [58] 1/3 1/5 21/13 24/25 27/23 29/21	
129/19 130/10 130/11 130/22 133/7 137/23	29/22 29/24 30/3 30/4 33/14 56/23 59/13	o'clock [1] 160/25
151/6 152/23 154/11 155/2 155/19 157/24	59/17 60/20 63/6 70/23 86/20 89/24 89/24	ofo [1] 171/14
172/5 172/9	90/5 92/24 93/1 102/6 102/17 103/6 103/21	Oakwood [28] 18/5 19/3 20/2 22/5 36/25
Mr. [16] 18/16 20/14 23/5 26/2 46/9 123/18	106/8 106/11 106/16 106/22 114/14 115/10	37/6 39/6 39/8 39/12 39/14 39/15 59/12 60/2
129/17 149/25 151/9 151/22 151/25 153/15	122/7 122/14 127/24 131/2 132/10 137/20	71/2 75/5 81/3 81/4 84/6 84/9 84/10 86/17
158/25 161/16 162/5 168/19	140/1 140/19 143/10 143/12 147/5 147/5	87/18 89/6 89/15 92/17 108/15 157/3 157/4
Mr. Morroughan [13] 18/16 23/5 26/2 129/17	151/13 154/15 154/17 159/8 162/10 163/20	oath [6] 107/16 148/23 152/9 153/2 154/19
149/25 151/9 151/22 151/25 153/15 158/25	163/22 167/17 168/23 168/23 168/24 169/4	159/4
161/16 162/5 168/19	169/12	object [5] 9/16 11/24 136/20 147/14 167/22
Mr. Morroughan's [1] 20/14	Nobody [1] 69/13	objected [1] 159/24
Mr. Thomas [2] 46/9 123/18	noise [1] 114/8	objecting [1] 165/7
Ms [5] 33/5 33/23 46/10 172/4 172/8	nom [2] 15/24 16/18	objection [27] 41/13 43/3 43/4 44/1 45/6
nunch [6] 31/9 73/16 83/11 101/22 159/23	non-department [1] 14/18	101/23 106/22 114/14 114/19 116/6 128/11
160/10	non-members [1] 152/4	128/12 138/11 145/5 150/6 150/10 153/6
multiple [12] 71/8 9/18 12/4 12/5 13/18	None [1] 40/22	154/20 155/8 159/24 160/20 160/24 164/13
13/18 22/10 53/4 72/14 143/20 143/20	noon [3] 149/1 149/5 149/9	164/25 165/4 165/22 166/6
153/14	normal [7] 3/24 111/19 113/19 145/3 145/4	objections [1] 4/5
multiplies [1] 117/13	145/10 148/20	objective [1] 31/24
municipal [1] 57/25	north [4] 81/2 84/10 157/2 174/15	obligated [1] 154/7
must [2] 78/3 113/16	northbound [4] 39/5 87/19 87/21 92/18	obligation [1] 169/7
my [189]	noise [6] 18/12 23/11 65/5 182/9 121/20	obscurities [1] 26/5
myself [15] 57/7 59/17 59/18 61/18 66/5 66/9	124/19	observation [1] 5/15
68/24 73/10 89/17 89/21 98/11 100/20	not [156] 3/22 5/5 5/6 8/15 8/17 9/8 10/5	observe [1] 96/25
105/24 105/25 143/22	11/10 11/11 12/3 14/24 15/1 15/6 15/8 17/7	observed [4] 39/13 64/6 95/12 121/25
		observers [1] 57/1

<p>O</p> <p>observes [1] 129/16</p> <p>obtain [1] 4/8</p> <p>obviously [3] 68/7 139/20 162/2</p> <p>occupant [2] 26/21 167/20</p> <p>occurred [1] 44/19</p> <p>occurrence [5] 71/1 71/1 118/22 126/23 134/16</p> <p>October [1] 144/6</p> <p>off [1] 98/2</p> <p>off [21] 18/7 19/5 22/12 38/10 40/3 40/17 59/3 59/8 59/14 59/17 62/7 67/10 81/1 83/25 85/25 118/21 126/22 134/15 138/21 139/11 162/3</p> <p>off-duty [3] 40/3 62/7 67/10</p> <p>offer [2] 155/7 155/9</p> <p>office [16] 4/18 6/12 14/21 43/10 45/13 46/9 48/12 49/4 101/10 115/24 120/11 122/1 129/2 132/21 145/24 148/8</p> <p>officer [193]</p> <p>officers [2] 30/5 69/10</p> <p>officers [32] 10/14 14/22 27/8 27/20 27/21 29/9 29/10 29/15 30/6 38/22 31/12 37/14 37/24 38/2 38/7 38/10 38/14 38/16 38/23 39/2 39/6 39/13 39/17 40/20 99/4 104/6 139/17 140/9 146/5 146/21 155/20 167/6</p> <p>offices [1] 39/16</p> <p>offices [1] 104/14</p> <p>official [2] 36/22 71/4</p> <p>offset [1] 93/6</p> <p>oh [2] 15/3 12/8</p> <p>okay [72] 5/10 5/25 6/15 9/5 13/22 15/11 17/10 17/11 17/22 25/20 32/23 41/15 41/18 42/17 43/14 44/6 47/13 67/13 67/20 67/24 69/7 69/21 71/16 74/1 74/9 77/5 100/22 104/2 106/17 106/23 114/18 115/11 117/4 117/8 117/11 122/20 122/25 131/3 131/12 132/8 134/10 136/23 137/12 141/15 141/25 142/2 143/1 143/17 144/7 147/17 147/20 147/23 148/2 148/10 148/24 149/3 149/7 152/23 158/13 159/16 159/23 161/1 162/2 162/19 166/18 168/8 168/10 169/22 170/16 170/22 170/25 171/13</p> <p>old [5] 2/14 4/18 74/15 83/2 108/14</p> <p>on-scene [1] 37/19</p> <p>once [5] 19/15 39/23 40/14 144/16 161/9</p> <p>one [63] 6/9 6/24 7/1 8/2 8/5 8/15 11/12 11/12 12/20 14/3 14/25 21/24 28/18 28/20 29/8 32/16 38/23 41/24 45/16 46/20 46/21 54/3 54/4 57/18 57/18 58/5 58/9 58/10 58/17 58/17 68/1 65/1 67/4 67/5 67/6 74/12 78/2 78/16 80/8 85/13 89/1 91/20 91/25 93/2 98/4 98/19 99/22 106/19 107/19 115/13 117/15 121/5 129/11 130/21 135/17 137/1 144/20 146/18 151/17 151/17 151/19 156/5 170/18</p> <p>one-page [2] 8/2 8/5</p> <p>ones [5] 10/2 10/3 17/19 100/22 153/16</p> <p>only [11] 3/17 3/20 17/5 56/21 68/14 69/5 73/9 90/3 110/17 137/11 169/17</p> <p>open [13] 10/16 17/20 60/14 64/19 65/3 65/18 82/9 85/10 95/24 102/12 103/16 105/16 105/19</p> <p>opened [2] 88/6 103/15</p> <p>opening [5] 6/1 17/17 25/21 73/6 172/3</p> <p>openings [1] 6/4</p> <p>operated [1] 19/10</p> <p>operates [2] 113/18 113/20</p> <p>operating [2] 38/11 127/2</p> <p>operator [3] 38/19 66/12 66/13</p> <p>opinion [18] 17/3 28/12 28/20 28/21 29/25 30/5 30/10 30/20 30/20 32/16 38/1 42/15 44/4 44/13 49/12 116/9 155/7 155/10</p>	<p>opinions [3] 42/3 42/11 136/21</p> <p>opposite [1] 75/6</p> <p>oral [1] 143/12</p> <p>orange [4] 84/18 84/25 85/7 85/23</p> <p>order [12] 3/6 26/23 39/9 56/23 64/21 90/4 92/23 120/8 146/11 146/20 166/15 168/25</p> <p>ordered [5] 58/8 58/12 64/14 66/22 145/18</p> <p>orders [1] 143/9</p> <p>originally [1] 72/2</p> <p>other [59] 9/6 9/7 10/3 11/3 12/17 13/7 20/5 22/8 30/18 31/14 46/21 47/10 52/16 58/5 58/6 58/10 58/11 58/19 59/19 62/10 63/17 65/2 67/15 67/22 72/10 74/17 84/6 84/15 89/2 93/1 93/3 94/4 94/16 94/19 94/22 95/4 96/23 97/6 97/25 100/9 100/18 103/17 116/18 120/14 124/17 128/4 130/23 136/4 136/19 138/3 138/15 140/10 140/13 140/14 146/14 153/23 156/25 164/16 170/19</p> <p>others [2] 9/11 57/15</p> <p>Otherwise [2] 12/12 12/21</p> <p>ought [2] 112/17 155/12</p> <p>our [21] 4/17 11/7 11/8 15/22 15/24 25/14 58/21 58/23 75/20 75/24 75/25 90/22 91/7 92/2 92/21 93/18 109/16 143/13 147/15 167/6 171/1</p> <p>out [64] 16/14 26/4 26/13 26/16 27/1 27/9 38/19 39/9 57/3 59/11 60/13 61/11 61/23 62/9 63/25 64/4 65/4 65/9 65/11 74/19 74/21 75/10 75/20 75/24 79/19 79/22 80/20 80/22 81/11 82/5 83/16 85/11 87/10 88/6 88/7 88/16 88/22 89/1 90/11 90/17 93/7 93/19 93/20 94/6 95/25 96/3 96/10 96/25 102/11 102/15 102/17 102/21 103/7 103/18 109/6 109/13 109/15 109/24 120/8 129/17 130/11 153/12 160/3 160/4</p> <p>outside [6] 23/15 41/16 41/19 110/3 145/12 167/1</p> <p>over [42] 22/5 27/11 28/19 28/21 30/1 30/6 35/25 39/7 39/13 46/23 50/9 55/14 62/14 66/7 67/1 73/1 73/16 75/5 75/7 92/22 94/4 97/4 97/10 98/15 102/2 102/13 105/20 108/5 109/3 116/20 122/24 123/11 126/1 126/15 129/25 132/1 132/9 135/18 145/19 155/8 155/21 160/13</p> <p>overall [2] 12/3 159/14</p> <p>overnight [3] 145/20 146/20 146/21</p> <p>override [2] 44/7 116/12</p> <p>overrated [5] 43/5 45/10 114/19 128/14 136/24</p> <p>own [3] 29/5 140/18 157/14</p> <p>owned [1] 38/12</p> <p>owner [2] 116/25 164/6</p> <p>owns [2] 138/20 139/4</p>	<p>pages [13] 7/14 7/15 74/12 74/13 77/17 78/2 86/6 89/12 89/14 110/19 122/23 123/1 149/22</p> <p>paid [2] 91/7 92/1</p> <p>pain [1] 18/13</p> <p>Palmbeach [2] 49/3 51/8</p> <p>panel [4] 94/2 94/8 96/14 96/15</p> <p>paragraph [94] 37/13 37/18 38/8 39/2 39/23 40/18 40/24 52/10 56/20 57/2 57/5 57/10 57/12 57/17 57/21 57/24 58/1 58/7 58/14 58/20 58/22 58/24 59/2 59/8 59/13 59/20 59/23 60/2 60/5 60/13 60/18 61/1 61/4 61/12 61/16 61/22 62/3 62/6 62/15 63/21 63/24 63/3 63/9 63/16 63/20 63/23 64/3 64/9 64/13 64/16 64/20 64/25 65/6 65/8 65/10 65/13 65/16 65/19 65/25 66/3 66/16 66/18 66/20 66/23 67/3 67/8 67/14 67/17 67/21 68/2 68/5 68/8 68/11 68/16 68/21 90/1 90/10 90/25 92/4 93/5 93/25 94/9 94/23 95/10 97/3 97/22 98/9 99/9 99/16 100/5 100/8 100/12 129/13 163/12</p> <p>park [1] 65/9</p> <p>packed [7] 57/25 58/21 59/9 81/3 84/16 87/20 157/3</p> <p>parking [2] 57/25 58/21</p> <p>part [29] 5/12 13/7 17/17 33/25 34/5 48/18 51/6 53/9 56/25 57/3 60/9 78/3 90/7 111/19 111/20 140/21 141/2 146/15 150/23 150/24 151/3 152/12 153/1 154/1 154/11 157/10 163/1 164/22 168/13</p> <p>participate [1] 69/18</p> <p>particular [8] 9/13 28/4 50/23 119/24 128/23 144/10 145/15 150/12</p> <p>particularity [1] 31/21</p> <p>particulars [1] 98/25</p> <p>parties [3] 3/21 3/25 4/10</p> <p>party [1] 167/9</p> <p>pass [7] 30/12 35/14 46/16 47/25 50/9 125/25 131/23</p> <p>passed [14] 6/5 55/11 80/12 80/25 84/1 84/3 108/5 118/10 123/10 126/15 132/9 134/8 135/7 136/5</p> <p>passenger [21] 19/14 38/22 40/9 60/7 60/10 60/14 63/12 76/19 81/5 85/3 87/23 87/23 88/6 109/15 113/19 128/18 131/17 132/16 136/18 157/5 158/5</p> <p>passing [21] 35/18 35/24 35/25 49/16 53/4 53/10 53/15 53/18 53/21 84/2 84/3 107/20 117/12 117/16 122/9 122/22 122/22 122/24 126/3 131/24 132/1</p> <p>Patrick [1] 72/14</p> <p>patrol [2] 36/24 37/9</p> <p>parvocat [1] 96/18</p> <p>paying [2] 83/11 84/24</p> <p>PRA [5] 203 67/9 67/22 68/10 68/18</p> <p>PD [1] 98/6</p> <p>PDCN [24] 6/21 7/1 43/11 53/15 54/10 70/19 117/10 117/16 118/6 118/16 120/3 125/24 126/8 126/18 127/19 133/21 134/4 134/11 134/20 134/25 172/20 173/4 173/6 173/8</p> <p>pedal [1] 113/23</p> <p>penal [12] 18/20 19/18 24/3 24/8 25/6 38/6 46/3 57/4 118/23 120/22 121/14 126/24</p> <p>pending [3] 10/17 10/18 13/9</p> <p>people [9] 22/9 73/9 75/14 75/15 88/23 97/6 143/20 146/20 159/17</p> <p>period [2] 102/4 145/23</p> <p>permissible [1] 28/3</p> <p>permit [4] 139/1 141/7 141/13 147/17</p> <p>permitted [1] 41/23</p> <p>person [12] 26/11 68/14 106/6 106/9 106/12 106/13 111/20 118/25 152/8 161/13 167/13</p>
<p>P</p>	<p>P</p>	<p>P</p>
<p>P-E-I-U-S [1] 18/18</p> <p>P-U-R-C-E-L-L [1] 5/19</p> <p>P.A. [1] 107/11</p> <p>pan [12] 57/11 80/5 91/2 91/8 101/10 104/13 107/11 149/1 149/1 149/6 149/10 171/16</p> <p>P.O. [33] 23/14 23/22 24/20 25/2 25/9 25/16 37/14 37/16 54/1 56/7 68/10 90/14 97/23 98/6 101/5 104/10 118/22 118/24 119/3 119/13 119/13 120/15 121/3 121/3 124/18 126/19 126/23 126/25 127/12 127/12 128/1 128/9 134/15</p> <p>package [7] 6/16 6/19 6/22 7/19 123/3 126/2 133/25</p> <p>packet [2] 53/7 135/18</p> <p>page [33] 7/19 7/21 7/22 7/24 8/1 8/2 8/5 8/6 50/24 53/18 53/21 53/23 53/24 53/25 75/21 75/23 77/2 77/23 82/17 82/25 86/12 101/16 101/16 101/18 104/19 104/19 107/23 108/10</p>	<p>P-E-I-U-S [1] 18/18</p> <p>P-U-R-C-E-L-L [1] 5/19</p> <p>P.A. [1] 107/11</p> <p>pan [12] 57/11 80/5 91/2 91/8 101/10 104/13 107/11 149/1 149/1 149/6 149/10 171/16</p> <p>P.O. [33] 23/14 23/22 24/20 25/2 25/9 25/16 37/14 37/16 54/1 56/7 68/10 90/14 97/23 98/6 101/5 104/10 118/22 118/24 119/3 119/13 119/13 120/15 121/3 121/3 124/18 126/19 126/23 126/25 127/12 127/12 128/1 128/9 134/15</p> <p>package [7] 6/16 6/19 6/22 7/19 123/3 126/2 133/25</p> <p>packet [2] 53/7 135/18</p> <p>page [33] 7/19 7/21 7/22 7/24 8/1 8/2 8/5 8/6 50/24 53/18 53/21 53/23 53/24 53/25 75/21 75/23 77/2 77/23 82/17 82/25 86/12 101/16 101/16 101/18 104/19 104/19 107/23 108/10</p>	<p>P-E-I-U-S [1] 18/18</p> <p>P-U-R-C-E-L-L [1] 5/19</p> <p>P.A. [1] 107/11</p> <p>pan [12] 57/11 80/5 91/2 91/8 101/10 104/13 107/11 149/1 149/1 149/6 149/10 171/16</p> <p>P.O. [33] 23/14 23/22 24/20 25/2 25/9 25/16 37/14 37/16 54/1 56/7 68/10 90/14 97/23 98/6 101/5 104/10 118/22 118/24 119/3 119/13 119/13 120/15 121/3 121/3 124/18 126/19 126/23 126/25 127/12 127/12 128/1 128/9 134/15</p> <p>package [7] 6/16 6/19 6/22 7/19 123/3 126/2 133/25</p> <p>packet [2] 53/7 135/18</p> <p>page [33] 7/19 7/21 7/22 7/24 8/1 8/2 8/5 8/6 50/24 53/18 53/21 53/23 53/24 53/25 75/21 75/23 77/2 77/23 82/17 82/25 86/12 101/16 101/16 101/18 104/19 104/19 107/23 108/10</p>

<p>P</p> <p>person [1] 1695</p> <p>person's [1] 169/10</p> <p>personal [1] 42/13</p> <p>personally [3] 453 144/18 159/8</p> <p>Personnel [1] 36</p> <p>persons [1] 96/23</p> <p>pertaining [1] 384</p> <p>perusing [2] 129/12 130/8</p> <p>Philippas [1] 99/1</p> <p>phone [6] 16/17 71/19 86/20 86/21 97/11 97/12</p> <p>phonics [1] 92/21</p> <p>photo [5] 131/23 131/24 132/17 132/19 133/2</p> <p>photograph [11] 47/3 47/6 47/18 47/21 132/5 132/14 172/14 172/15 172/16 172/17 173/7</p> <p>photographs [13] 46/7 46/18 46/20 48/10 51/23 52/14 115/22 119/11 121/3 127/9 128/25 131/22 133/14</p> <p>photos [5] 47/10 48/15 48/21 49/1 49/5</p> <p>phrase [1] 9/19</p> <p>physical [5] 29/11 23/7 23/9 38/5 96/22</p> <p>pick [1] 83/9</p> <p>picture [1] 87/11</p> <p>pieapple [1] 57/14</p> <p>pics [1] 83/24</p> <p>piers [1] 81/1</p> <p>pickles [1] 140/14</p> <p>place [19] 22/19 27/16 28/15 37/5 64/7 71/5 72/9 72/11 73/25 74/17 108/16 118/21 126/23 134/16 144/7 144/12 144/23 145/18 159/2</p> <p>placed [3] 98/3 98/4 98/11</p> <p>plain [1] 38/11</p> <p>planning [1] 10/24</p> <p>plans [4] 57/3 90/11 90/16 90/22</p> <p>plate [2] 66/2 66/14</p> <p>playing [1] 87/8</p> <p>please [23] 33/9 36/3 41/14 41/19 45/21 47/2 47/16 49/15 49/24 49/25 50/9 50/20 51/17 104/21 107/11 107/24 115/15 118/19 118/20 123/4 126/7 126/20 134/13</p> <p>plus [1] 124/17</p> <p>pocket [1] 154/13</p> <p>point [29] 9/9 9/12 18/5 18/9 10/18 13/5 13/14 21/11 28/20 29/18 38/23 45/4 59/3 59/4 61/24 62/15 73/4 95/5 97/17 97/20 103/17 106/18 110/10 111/13 117/11 129/20 155/16 157/16 168/15</p> <p>pointed [2] 62/12 62/19</p> <p>pointing [2] 27/4 61/7</p> <p>police [143] 1/2 1/5 1/7 2/5 3/11 5/1 5/14 6/17 6/23 6/25 7/4 7/5 7/9 14/25 17/24 18/8 18/21 19/6 19/11 19/15 19/19 20/6 20/19 21/6 21/15 21/17 21/20 22/3 22/20 22/25 23/4 23/16 24/12 26/5 27/4 27/20 27/20 29/9 29/18 29/15 30/6 30/8 30/22 31/6 31/12 32/3 33/7 34/14 34/18 34/20 35/7 36/22 37/11 37/14 37/20 37/23 37/24 39/2 39/18 40/25 41/1 41/3 41/5 44/20 46/18 46/11 51/12 52/24 53/12 55/22 56/17 62/18 66/5 66/19 67/5 68/13 68/24 70/20 70/22 71/11 74/10 76/6 77/9 77/24 82/6 82/23 88/24 89/9 89/20 89/23 97/13 99/18 100/6 100/13 100/19 101/1 101/2 101/6 103/23 104/1 104/6 104/7 104/10 106/7 106/10 106/14 108/10 115/3 115/25 115/25 118/18 119/10 127/8 129/2 129/3 129/13 129/15 129/21 130/2 130/24 132/24 133/6 133/20 138/22 138/23 139/5 139/6 139/8 139/13 139/16 140/4 140/21</p>	<p>141/5 141/8 141/19 142/23 142/25 143/2 143/2 143/7 155/20 157/11 174/5</p> <p>policeman [1] 11/2</p> <p>Pohmabo [1] 132/20</p> <p>poor [1] 31/9</p> <p>portion [3] 125/13 131/13 155/10</p> <p>portions [6] 7/8 54/1 113/12 116/18 122/10 124/4</p> <p>pose [1] 60/12</p> <p>position [12] 10/10 13/5 21/20 61/19 63/17 109/18 140/21 150/14 165/25 166/1 166/9 167/18</p> <p>possession [1] 138/16</p> <p>possession [2] 131/15 141/23</p> <p>possibility [1] 161/4</p> <p>possible [3] 159 167/3 167/4</p> <p>possibly [2] 8/13 8/14</p> <p>potentially [1] 12/22</p> <p>practice [1] 146/4</p> <p>Prerinct [15] 27/3 37/16 37/17 56/19 68/7 68/9 68/12 68/15 68/17 68/22 70/24 77/19 99/18 99/25 110/21</p> <p>precisely [1] 156/1</p> <p>preliminary [1] 41/4</p> <p>preliminary [7] 6/3 36/13 37/1 37/22 37/25 44/15 115/4</p> <p>preparation [1] 150/23</p> <p>prepare [1] 11/5</p> <p>prepared [4] 17/7 44/18 149/12 149/19</p> <p>preparing [1] 62/4</p> <p>prerogative [1] 11/7</p> <p>prescribed [1] 24/22</p> <p>presence [4] 14/16 31/7 41/16 51/3</p> <p>present [19] 27/19 21/18 22/9 25/23 27/13 28/6 28/11 28/21 28/22 29/5 31/3 31/25 38/13 56/3 78/12 78/19 89/6 99/15 101/5</p> <p>presented [1] 9/23</p> <p>presenting [5] 37/7 97/10 10/9 11/18 17/25</p> <p>press [2] 32/7 32/11</p> <p>presumably [1] 148/13</p> <p>prevent [3] 13/10 65/9 84/2</p> <p>previously [1] 20/18</p> <p>prior [11] 6/7 8/12 35/7 36/14 53/9 55/21 72/3 101/18 152/3 153/15 153/16</p> <p>Prize [21] 18/17 19/8 20/13 38/20 48/23 51/2 59/25 60/6 60/11 64/4 65/23 66/1 80/3 109/7 111/22 113/18 119/2 127/2 132/16 134/18 159/17</p> <p>private [1] 86/23</p> <p>privately [2] 38/12 140/24</p> <p>probably [1] 91/25</p> <p>problem [1] 168/2</p> <p>procedural [1] 35/13</p> <p>procedurally [1] 119/16</p> <p>procedure [1] 10/13</p> <p>process [5] 9/24 14/3 15/7 31/22 74/4</p> <p>proceeded [1] 185/19</p> <p>proceeding [7] 4/5 11/12 11/13 11/14 57/1 69/9 90/9</p> <p>proceedings [1] 69/16</p> <p>process [11] 9/16 10/1 11/22 11/25 12/3 12/7 13/1 13/21 29/1 145/17 146/11</p> <p>procure [1] 107/12</p> <p>producing [1] 14/10</p> <p>product [1] 147/9</p> <p>Professional [3] 33/20 104/17 174/2</p> <p>prohibits [1] 169/3</p> <p>prominent [1] 124/14</p> <p>proof [1] 147/16</p> <p>proper [1] 128/6</p> <p>properly [4] 20/3 24/14 25/9 138/2</p> <p>property [17] 20/5 118/25 138/4 138/7 138/9 138/15 138/17 138/19 138/19 139/4 139/5</p>	<p>146 139/7 142/2 166/24 167/8 167/14</p> <p>prophecy [1] 71/21</p> <p>propriety [1] 29/18</p> <p>protect [4] 26/23 26/23 81/25 158/24</p> <p>provably [1] 112/16</p> <p>prove [3] 12/5 12/9 12/10</p> <p>provide [2] 49/22 115/3</p> <p>provided [6] 46/7 48/11 52/15 53/7 115/23 129/1</p> <p>providing [3] 53/5 117/20 133/24</p> <p>proving [3] 24/16 147/11 147/4</p> <p>Provision [1] 141/24</p> <p>proximity [1] 113/22</p> <p>prudent [2] 26/15 32/2</p> <p>public [11] 33/21 69/4 69/6 69/18 72/19 86/11 101/15 104/17 171/25 174/3 174/16</p> <p>pull [8] 27/9 65/4 93/14 95/25 96/3 102/15 109/7 129/17</p> <p>pullled [21] 22/5 26/3 39/6 39/13 39/15 59/8 59/10 59/25 60/6 63/25 64/19 75/5 75/6 75/9 75/12 81/6 92/22 93/5 109/3 157/1 157/5</p> <p>punched [3] 103/11 106/3 125/3</p> <p>punching [5] 65/1 102/13 103/13 105/20 130/22</p> <p>punishable [1] 87/2</p> <p>Prinell [5] 27/3 51/8 67/19 68/10 99/1</p> <p>purchase [5] 140/10 140/13 140/23 141/1 141/11</p> <p>purpose [5] 11/8 115/2 147/12 150/5 165/19</p> <p>purposes [5] 57/5 35/13 56/21 90/2 150/12</p> <p>pursuant [8] 3/9 15/22 16/21 18/20 19/18 27/15 87/3 101/13</p> <p>pushing [1] 9/8</p> <p>push [3] 31/16 96/10 160/16</p> <p>pushed [1] 114/5</p> <p>pushing [1] 113/23</p> <p>put [20] 28/5 28/10 39/21 39/25 40/14 80/21 83/13 83/16 83/19 85/22 98/3 102/2 102/10 107/18 112/13 133/11 143/15 160/10 161/11 161/21</p>
		<p>Q</p> <p>qualifications [1] 112/18</p> <p>quarter [4] 94/1 94/8 96/14 96/15</p> <p>question [32] 24/25 44/9 102/1 102/7 102/16 102/19 102/22 102/24 103/4 103/7 103/11 103/15 103/17 103/22 103/25 104/21 105/7 105/12 105/13 106/1 106/5 106/9 106/12 112/1 114/13 147/25 153/7 155/17 165/22 168/3 168/5 170/19</p> <p>questioned [1] 78/13</p> <p>questioning [3] 78/17 78/20 148/6</p> <p>questions [8] 44 8/21 12/18 13/25 26/17 78/5 78/18 137/13</p> <p>quick [1] 71/15</p> <p>quickness [1] 160/19</p> <p>quiet [1] 114/3</p> <p>quite [1] 164/20</p> <p>quote [2] 157/1 159/19</p> <p>quote [1] 157/8</p>
		<p>R</p> <p>rage [4] 23/1 59/18 92/25 134/19</p> <p>raise [1] 154/10</p> <p>Ralph [2] 68/24 143/21</p> <p>ran [4] 27/11 66/1 66/10 96/11</p> <p>rank [4] 15/1 33/10 139/17 140/6</p> <p>ranking [5] 29/10 29/16 30/21 31/1 99/3</p> <p>rayed [1] 99/10</p> <p>re [1] 11/4</p> <p>reach [7] 35/3 41/10 41/12 42/25 43/16 132/25 136/10</p> <p>reached [6] 8/16 36/15 48/16 52/18 76/20</p>

R		
reached... [1] 185/20	Registration [3] 18/18 19/9 119/2	respond [1] 103/5
reaching [1] 96/5	regs [8] 21/10 21/24 24/5 24/10 24/22 120/17	responded [2] 29/11 30/2
read [28] 4/12 16/9 17/15 17/16 20/18 36/19	128/2 136/12	respondent [2] 2/13 4/14
58/21 56/13 66/2 70/2 70/12 71/16 79/17	regulations [6] 3/15 32/4 34/17 43/8 43/21	responding [1] 97/16
82/17 86/5 89/11 101/18 104/22 105/8 108/7	117/10	response [18] 17/4 35/12 35/19 36/5 36/12
110/18 111/6 118/19 124/2 126/20 134/13	Reid [1] 104/16	36/24 37/3 38/2 43/25 44/14 44/16 91/24
153/24 160/1	rebate [1] 117/23	114/22 115/2 115/6 122/4 163/2 172/13
reading [4] 28/8 69/25 70/11 70/17	related [1] 135/6	responses [2] 142/13 158/11
reads [2] 18/3 138/2	rebates [2] 117/24 118/1	responsibilities [2] 30/12 150/24
ready [1] 113/25	release [1] 99/12	responsible [2] 14/10 114/4
real [1] 32/14	released [2] 40/22 99/16	rest [2] 70/17 105/12
really [6] 21/23 44/1 73/6 73/21 153/7	relevant [4] 4/3 145/13 146/1 146/22	restaurant [3] 57/8 57/11 57/18
166/12	relic [2] 133/17 153/24	result [2] 17/3 21/5 24/20 35/1 35/3 37/25
realm [2] 167/2 167/3	rely [1] 113/7	44/23 45/23 119/25 120/10 120/13 123/19
rear [9] 62/13 66/2 93/10 94/8 94/13 128/18	remain [5] 10/17 10/18 78/6 119/22 156/23	125/19 127/16 127/25 128/10 128/20 134/23
131/17 132/15 133/9	remainder [1] 123/2	138/22 139/7 154/7
reason [5] 102/9 14/23 29/24 30/3 30/4	remained [2] 68/8 97/9	resulted [1] 71/7
reasonable [7] 21/19 26/7 26/11 26/15 31/19	remarkably [1] 32/12	results [11] 43/23 43/23 43/24 44/11 44/12
165/20 160/13	remedy [4] 73/2 167/1 167/12 167/14	45/3 45/15 113/14 125/12 131/13 159/11
reasonably [1] 32/1	remember [5] 58/7 66/8 110/2 110/11 169/1	refire [1] 101/5
recall [17] 58/5 58/9 58/14 58/16 58/18 58/19	remind [2] 3/21 4/9	retained [4] 16/5 42/22 58/23 133/23
60/22 60/24 94/15 97/6 97/17 97/15 97/17	remove [1] 64/20	rev [13] 111/14 111/18 111/19 111/24 112/1
97/18 97/24 99/3 102/23	removed [2] 40/21 62/7	113/9 159/18 159/20 160/23 161/8 162/20
receive [1] 144/14	Romulo [1] 104/16	162/21 162/25
received [5] 37/22 53/8 98/10 105/2 105/3	rep [2] 68/10 107/5	revealed [1] 51/3
recess [6] 32/22 33/1 70/5 70/10 106/25	repair [4] 117/3 163/19 163/21 167/12	reverse [16] 39/21 40/15 62/1 65/14 75/18
147/21	repaired [1] 111/14	85/22 88/2 88/14 105/22 109/18 114/12
redness [4] 41/5 45/12 136/16 136/17	repass [1] 113/1	125/16 160/18 160/22 161/10 161/21
reckless [1] 166/24	repeat [2] 44/10 168/5	review [25] 32/14 36/14 37/19 46/6 49/6
recognize [10] 29/9 36/8 36/11 48/5 48/9	repeated [1] 26/25	52/15 53/21 56/4 112/21 119/19 119/20
118/12 123/13 126/14 132/9 134/7	repeatedly [1] 151/20	119/25 120/4 122/3 123/19 124/15 127/14
recollection [3] 62/2 63/15 105/5	rephrase [3] 112/8 164/16 168/10	127/16 127/17 128/24 129/10 130/8 134/21
recommendation [3] 43/12 43/17 56/6	report [67] 7/14 7/16 17/4 32/8 34/25 35/6	134/23 163/6
reconstructed [1] 51/13	35/10 35/11 35/12 36/5 36/13 36/15 36/17	reviewed [11] 27/18 49/11 50/13 52/17
reconstruction [16] 7/13 44/19 46/7 49/13	37/1 44/16 44/18 44/20 46/7 49/14 49/18	115/21 116/14 123/18 125/7 131/20 150/13
111/16 111/16 113/2 115/22 119/9 121/2	50/3 50/13 50/21 50/25 51/1 51/6 51/10	150/15
125/6 127/7 128/25 131/6 133/13 133/14	51/15 52/2 52/10 52/16 100/11 105/2 111/1	reviewing [1] 111/15
Reconstructive [2] 49/18 50/2	113/17 113/2 113/7 113/8 113/12 114/23	revolver [23] 19/11 19/12 19/17 20/11 20/13
recessive [2] 147/20 160/25	115/4 115/22 116/15 117/6 117/8 118/16	22/13 23/3 24/15 25/10 40/4 40/11 40/13
record [61] 44/4/9 41/3 5/3 5/5 5/17 6/13	119/10 119/17 121/2 124/6 125/6 125/9	52/13 82/11 125/15 130/15 130/17 131/1
7/10 8/8 8/18 10/23 13/6 17/15 20/17 20/19	127/8 128/25 131/6 131/8 131/14 131/18	131/15 132/15 134/17 138/21 140/2
23/13 25/22 33/4 33/4 35/18 36/20 42/28	133/14 140/12 140/19 159/14 159/19 163/2	revved [8] 75/17 81/20 158/19 160/15 161/9
43/6 46/22 49/16 50/6 51/17 53/3 53/10	172/13 172/18 173/5	162/5 162/9 163/4
55/10 55/17 56/12 56/14 70/8 70/9 70/13	reporter [7] 33/20 72/7 72/15 104/17 174/1	162/5 162/9 163/4
71/25 74/2 104/22 104/24 105/8 107/3 107/3	174/3 174/14	revving [4] 94/20 109/19 109/25 111/7
108/8 115/1 115/15 118/19 122/11 122/24	REPORTERS [1] 174/15	riding [1] 83/6
123/6 123/25 124/2 124/15 126/21 133/11	reporting [2] 73/23 119/18	rifle [1] 140/13
137/5 147/24 153/25 155/16 166/17 170/19	reports [5] 32/7 112/22 124/20 124/21	right [57] 5/5 16/22 39/5 39/7 39/15 60/17
record's [2] 121/4 132/3	125/21	61/7 75/7 78/6 78/11 78/12 78/20 84/7 84/9
records [5] 99/13 121/6 123/17 123/20 127/9	representative [2] 4/24 25/24	84/12 84/16 92/15 92/17 95/20 96/2 96/3
recover [1] 152/25	represented [1] 145/17	96/16 98/18 98/24 103/14 109/4 129/18
recovered [1] 24/16	representing [1] 140/22	129/19 139/14 140/9 140/14 141/2 141/12
red [2] 84/5 84/7	request [4] 69/6 151/17 151/18 151/19	141/12 144/2 144/16 144/21 149/13 149/17
redacted [1] 100/16	requested [2] 14/16 164/4	150/1 151/23 152/7 153/21 154/22 155/22
registered [1] 94/5	requests [3] 26/25 69/17 150/22	156/15 156/23 157/12 157/21 159/2 159/21
received [1] 39/24	required [3] 13/13 140/17 153/1	164/11 165/3 165/17 166/14 166/20 169/6
refer [2] 52/10 138/6	reserve [1] 73/6	right-hand [1] 30/7
referred [3] 31/14 49/9 50/25	reside [1] 86/17	rights [9] 56/24 78/1 78/4 78/5 78/23 78/24
referring [1] 113/13	residential [2] 38/17 39/10	79/2 90/6 156/19
reflect [16] 8/8 10/23 12/14 13/23 25/22 33/4	resign [1] 13/11	rings [1] 147/12
35/18 46/22 49/16 50/6 51/17 53/3 55/10	resisted [1] 64/22	ripe [1] 13/4
55/17 136/6 137/11	respect [69] 7/16 9/13 10/8 10/12 15/12 45/9	ripped [2] 65/11 130/11
reflects [1] 74/2	46/5 47/11 49/6 49/11 50/13 50/16 50/20	Risco [1] 31/2
refreshed [1] 115/18	50/23 51/16 51/23 52/1 52/5 55/24 56/2 56/5	road [42] 2/14 4/18 18/5 19/3 20/2 22/5
refused [3] 26/25 151/20 154/13	111/6 111/9 111/10 111/16 112/22 113/7	36/25 37/6 39/6 39/8 39/12 39/14 39/15 39/3
refusing [1] 169/6	113/9 115/14 115/16 115/17 115/19 120/14	50/4 50/6 50/9 50/12 50/18 50/24 60/3 71/2
reg [4] 51/3 127/2 129/9 134/18	120/17 120/23 120/24 121/8 121/11 121/13	75/5 76/18 76/22 80/22 83/18 84/6 84/9
regard [2] 38/3 117/5	122/8 122/11 123/21 125/7 125/20 127/18	84/11 84/12 84/17 84/19 87/14 89/16 92/15
regarding [6] 34/20 68/15 115/11 115/13	128/8 128/23 129/7 130/5 130/13 131/3	92/23 92/25 109/4 109/5 134/19 157/3
147/25 155/2	131/5 131/9 131/21 133/1 133/21 134/20	roadway [1] 87/20
Registered [1] 104/16	134/24 135/22 136/4 136/10 137/7 143/9	roll [2] 96/17 142/7
	146/23 149/11 154/23 165/5 168/3 170/20	rolled [4] 60/8 81/5 157/4 158/4
	respectfully [1] 155/6	rolling [1] 76/22
		room [8] 41/21 68/17 87/8 98/11 98/12

R		
room [3] 105/25 129/23 145/14	see [19] 159 16/22 17/8 48/15 51/4 61/8	short [2] 39/24 100/22
rounds [2] 40/3 63/5	71/13 77/5 85/14 85/16 88/14 88/17 94/14	shortly [1] 27/22
route [2] 67/8 92/9	109/21 110/5 117/17 135/15 138/5 154/20	shot [18] 63/13 66/7 66/8 66/12 67/1 85/13
roughly [1] 11/20	seeing [1] 97/6	85/15 85/17 85/19 85/21 86/3 87/22 88/1
rule [25] 144 14/12 15/16 15/23 16/9 16/21	seeking [1] 152/25	88/8 89/1 110/7 116/16 136/18
18/25 19/23 20/16 21/22 21/25 24/4 24/9	seen [1] 159/17	shots [21] 9/19 13/18 19/14 23/19 26/22 27/6
24/13 25/8 25/12 25/12 45/18 49/7 55/23	seemed [1] 89/2	64/8 81/24 88/25 89/2 95/11 101/21 104/24
56/8 120/19 128/6 129/9 165/11	seems [9] 14/8 31/13 73/5 73/8 73/22 112/5	104/25 105/1 105/4 105/11 110/4 110/8
rules [22] 3/15 9/1 9/3 14/8 21/10 21/23 24/5	146/3 166/19 167/22	119/1 158/22
24/10 24/22 25/7 25/17 29/4 29/22 32/4	seen [2] 48/13 132/17	should [12] 4/7 7/8 18/4 30/5 42/6 42/16
34/16 43/8 43/21 117/9 118/17 120/17 128/2	sees [1] 129/15	69/13 71/22 90/17 115/7 123/1 154/6
136/12	selecting [1] 28/18	shoulder [2] 39/7 92/22
run [8] 62/4 65/21 66/7 67/1 95/17 98/14	scene [4] 12/2 12/7 13/20 29/1	shouldn't [3] 42/7 69/12 112/12
129/25 155/21	sentences [1] 163/12	shoot [1] 39/17
running [2] 65/22 162/2	sentences [1] 153/8	shouted [1] 62/18
Rudic [1] 8/5	separate [3] 12/22 47/1 108/20	shouting [1] 26/5
S	separated [1] 39/3	show [5] 16/11 16/23 22/11 23/17 24/11
Sabin [1] 86/18	separately [1] 38/11	showed [1] 116/15
sailguard [6] 20/4 24/14 25/10 134/16	separating [1] 60/3	shown [1] 126/12
135/24 138/3	September [2] 117/1 144/5	sic [1] 79/21
sailguarding [1] 128/7	sergeant [54] 2/20 2/21 5/22 15/2 20/24 22/1	side [48] 19/17 23/2 23/23 29/8 40/8 40/9
safety [1] 62/7	22/18 22/24 23/12 23/18 33/8 33/12 33/24	40/10 48/25 51/22 59/4 59/9 59/24 60/7 60/8
said [32] 8/25 11/11 12/17 13/24 20/13 28/7	36/8 37/11 42/5 42/18 42/24 43/22 48/5	62/10 64/4 64/14 64/17 65/15 71/9 75/5 75/7
60/21 66/5 66/6 66/10 82/6 85/8 86/2 94/10	50/12 55/15 55/20 67/18 70/10 86/25 89/5	76/18 76/19 81/4 83/18 83/18 84/12 84/16
97/14 98/2 101/24 102/1 106/9 109/10	89/8 89/17 98/16 100/20 107/9 107/10	93/7 93/11 93/20 94/1 95/18 96/13 96/15
124/16 153/24 155/25 159/18 159/19 160/3	107/15 108/6 108/7 111/1 112/21 114/17	102/13 105/15 109/4 109/16 116/21 119/4
162/5 162/8 162/11 162/19 163/14 168/19	114/21 123/11 123/13 126/14 132/8 134/7	122/2 129/15 130/19 157/3 163/25 168/25
same [13] 12/6 12/23 13/19 36/17 43/3 44/18	135/21 137/4 142/12 148/23 150/10 158/10	side-view [1] 93/11
58/12 102/3 102/14 103/9 114/13 128/12	171/4 171/10 172/7	sidel [1] 124/11
143/1	serial [7] 1/5 33/16 37/15 37/16 56/18 70/23	sidewalk [3] 97/4 97/5 97/18
Sanctuary [2] 2/20 5/23	89/24	sight [1] 61/11
sat [1] 59/20	series [1] 113/24	sign [1] 66/11
save [4] 47/11 165/20 166/3 166/15	seriously [1] 165/16	signature [2] 79/5 79/8
saw [31] 67/18 67/19 67/19 67/22 67/24	served [7] 3/12 20/19 21/7 118/17 119/15	signed [16] 16/2 41/6 68/23 71/11 75/21
75/19 76/1 76/11 76/21 76/22 77/4 77/14	126/19 134/11	75/22 77/20 82/20 86/9 89/14 89/15 89/17
81/3 81/23 84/11 84/18 85/15 87/11 87/16	service [3] 3/9 10/21 16/6	100/17 100/19 100/20 110/22
87/19 88/1 88/9 88/23 93/11 93/19 95/17	serving [2] 16/8 73/23	significant [5] 112/2 112/3 114/6 114/10
95/23 109/7 109/17 157/3 158/21	session [1] 3/3	159/19
say [23] 7/8 30/6 32/10 44/3 60/18 66/17	set [4] 34 13/19 28/18 174/8	signing [1] 99/12
72/10 78/8 103/19 105/10 107/10 115/7	severely [1] 66/6	silent [2] 78/6 156/23
145/1 151/6 156/17 161/16 161/19 162/21	seventy-eight [1] 66/6	similar [1] 146/14
162/24 166/16 167/9 167/15 169/11	several [10] 14/18 22/8 58/1 72/4 149/22	simply [4] 16/17 29/7 30/9 32/15
saying [17] 64/23 93/22 94/15 97/16 102/16	152/14 152/25 154/2 163/15 164/4	simultaneously [2] 96/5 101/25
102/20 102/25 103/7 103/18 110/1 153/22	shared [1] 30/21	since [1] 61/10
164/10 164/15 164/17 166/13 167/16 167/23	shatter [1] 95/21	single [1] 53/6
say [10] 14/13 74/15 79/7 79/21 83/2 101/19	shattered [2] 64/7 85/6	sit [2] 66/22 132/23
108/14 156/25 158/16 165/12	shatters [2] 52/12 125/15	sitting [4] 72/13 85/2 87/7 88/23
scan [1] 124/7	she [33] 11/2 11/19 20/25 21/2 31/3 31/14	six [4] 50/24 160/11 160/21 161/11
scene [16] 30/2 37/19 40/17 44/19 46/9 49/13	31/16 41/24 60/11 60/12 66/7 66/10 66/25	sleep [1] 146/8
66/21 115/24 116/15 119/10 127/8 131/22	76/19 83/15 88/8 93/18 94/10 97/5 97/25	slightly [3] 62/14 93/6 114/7
132/14 133/12 133/14 162/8	121/25 146/13 146/19 150/12 150/13 150/15	slipped [1] 156/10
scheduled [4] 72/3 72/8 72/25 148/7	150/16 160/3 160/3 160/4 161/20 162/24	slips [1] 163/21
scheduling [1] 170/2	162/24	slow [2] 67/22 83/24
School [1] 75/6	she's [1] 28/8	smaller [1] 93/11
Science [1] 51/12	She's [2] 30/15 31/10	smash [2] 61/14 65/4
scope [3] 3/19 23/15 71/3	sheet [5] 50/24 52/9 113/14 125/12 131/19	smashed [7] 64/17 82/3 116/21 119/4 121/17
screaming [5] 76/16 96/24 103/3	shield [16] 27/3 33/10 33/14 37/15 37/17	121/19 130/19
screetching [2] 87/9 162/14	56/18 64/1 64/4 76/3 89/24 95/8 96/25 97/2	smashing [2] 24/21 95/19
seat [5] 18/17 24/18 35/3 128/18 128/18	101/2 104/7 109/22	Smith [10] 18/10 19/12 20/10 22/12 23/2
seated [5] 18/16 59/24 60/14 61/19 62/17	shift [9] 65/7 65/14 80/5 80/9 145/3 145/4	23/6 24/15 25/10 134/17 140/16
second [30] 18/23 19/21 24/2 24/7 25/4 25/5	149/3 149/6 149/10	so [59] 8/17 9/25 11/5 11/13 15/7 42/15
37/21 40/25 41/3 45/11 52/8 56/10 68/7 68/9	shifted [1] 160/19	43/15 46/24 56/22 58/25 69/7 69/12 70/9
68/11 68/15 68/17 68/22 69/2 70/19 77/18	shifting [2] 65/9 82/13	72/22 73/19 81/12 81/13 82/8 90/3 101/18
99/18 99/25 110/20 118/24 120/7 121/14	shirts [3] 114/11 148/21 148/25	105/3 107/18 107/20 111/20 111/23 117/14
137/2 156/5 161/12	ship [1] 163/19	120/4 124/16 135/21 137/3 139/3 140/10
second degree [1] 56/10	shirt [4] 84/18 84/25 85/8 85/24	140/13 140/16 141/17 142/2 142/14 143/15
seconds [2] 100/11 160/21	shoot [1] 63/18	144/10 144/14 145/20 145/22 146/17 148/5
section [6] 14/12 15/14 18/21 19/19 56/7	shooting [31] 7/13 29/19 35/20 36/25 37/4	148/8 148/20 149/15 151/5 152/23 155/17
87/4	44/18 46/6 49/17 50/2 51/13 52/16 67/11	156/13 156/22 156/23 157/14 159/25 160/18
secure [1] 96/12	85/1 87/14 88/3 88/5 88/11 88/18 110/6	165/3 166/18 169/15
	111/16 115/21 119/9 121/1 121/7 128/24	socialized [1] 90/18
	131/6 133/13 133/13 142/25 168/1 172/18	soft [2] 124/9 124/13
	SHORE [1] 174/15	safety [2] 42/3 79/17

<p>S</p> <p>source [26] 13/14 13/16 28/11 29/16 32/12 34/25 42/12 42/12 44/4 51/19 59/3 74/8 75/13 80/11 90/17 97/20 109/4 111/13 137/13 138/16 138/17 150/25 151/6 153/15 155/24 157/19</p> <p>somebody [6] 30/18 34/10 72/22 73/19 112/18 147/10</p> <p>something [20] 42/8 42/9 71/20 76/2 83/12 84/21 88/19 92/5 110/1 111/2 111/2 112/14 112/16 125/5 140/17 140/20 148/7 159/18 160/5 170/5</p> <p>sometimes [1] 10/14</p> <p>Sophia [27] 71/24 57/16 59/21 62/9 62/17 67/5 67/16 68/21 74/23 76/16 76/16 76/20 90/23 91/6 91/10 97/8 107/21 108/1 108/11 108/13 110/22 116/1 119/12 121/5 [27/11 162/23 173/3</p> <p>Sophia's [5] 57/22 62/7 91/11 92/11 92/12</p> <p>sorry [17] 47/20 84 156 20/8 22/21 71/16 117/14 120/11 122/4 122/8 122/13 122/21 128/11 133/19 156/5 156/10 171/6</p> <p>sound [1] 87/9</p> <p>source [3] 31/8 119/8 127/6</p> <p>sources [1] 72/21</p> <p>south [2] 37/6 39/8</p> <p>southbound [2] 80/20 96/18</p> <p>speak [6] 11/23 67/14 112/18 151/22 154/11 154/13</p> <p>speaking [2] 104/20 151/12</p> <p>speaks [1] 129/14</p> <p>spec [2] 120/7 127/20</p> <p>Special [4] 49/3 51/8 113/15 133/20</p> <p>specific [5] 9/21 97/7 139/20 139/21 143/8</p> <p>specificity [13] 54/2 115/14 116/3 121/11 125/1 125/2 128/4 129/8 138/12 143/21 146/5 146/19 158/4</p> <p>specifications [7] 3/13 6/20 9/8 11/20 18/3 20/18 21/8</p> <p>specs [4] 119/23 120/3 137/10 154/21</p> <p>speculation [1] 160/25</p> <p>speed [1] 84/1</p> <p>speeding [1] 65/14</p> <p>spells [1] 161/4</p> <p>spell [1] 92/2</p> <p>spoke [7] 60/11 60/11 68/14 90/13 90/20 129/23 153/25</p> <p>spot [1] 148/10</p> <p>Squad [8] 37/12 37/21 37/21 40/25 40/25 41/3 99/24 100/14</p> <p>stages [1] 11/21</p> <p>stake [1] 154/12</p> <p>stand [1] 94/24</p> <p>standard [1] 147/16</p> <p>standing [10] 64/13 76/19 81/22 84/18 94/1 94/7 94/12 97/10 110/3 158/21</p> <p>start [3] 138/1 144/4 148/14</p> <p>started [20] 26/2 62/11 65/20 76/8 76/16 80/9 81/19 83/23 83/24 84/13 84/25 85/22 101/20 109/13 110/9 113/25 137/21 144/5 158/19 160/14</p> <p>starting [1] 148/4</p> <p>starts [3] 113/23 114/7 114/9</p> <p>state [25] 3/9 5/16 10/22 18/18 18/20 19/9 19/18 23/1 24/3 24/8 33/10 33/21 38/6 46/3 79/15 87/5 101/15 104/18 118/23 120/22 126/24 141/16 141/17 174/3 174/16</p> <p>state-manualized [1] 10/22</p> <p>stated [11] 57/1 52/11 111/17 113/15 117/2 121/16 121/19 130/21 131/14 140/6 153/10</p> <p>statement [92] 7/4 7/20 7/21 7/22 7/24 8/1 8/2 8/5 8/6 52/22 53/1 53/7 53/12 53/16</p>	<p>53/19 53/22 53/23 53/24 53/25 54/1 54/13 54/16 54/19 54/22 54/25 56/15 56/21 56/23 56/25 68/14 68/19 68/23 70/19 70/21 73/7 74/10 74/10 77/16 77/23 77/24 82/18 82/23 82/25 86/5 86/12 86/13 86/14 87/2 89/4 89/8 89/11 89/19 89/19 90/2 90/5 90/7 100/23 104/2 107/19 107/21 107/23 108/1 108/10 110/18 111/2 111/5 111/10 121/25 124/24 124/24 124/25 129/14 129/21 130/2 130/6 130/10 130/14 134/14 154/5 155/19 156/13 156/18 158/15 159/7 161/18 172/19 172/21 172/22 172/23 172/24 172/25 173/3</p> <p>statements [52] 4/6 6/1 6/23 7/3 7/18 28/19 46/9 49/8 49/8 49/10 52/21 52/23 52/34 52/24 52/25 53/4 55/11 55/20 56/13 69/25 70/12 74/4 100/9 100/17 100/18 115/24 119/11 119/13 121/3 121/8 121/9 121/12 121/15 121/18 124/16 127/10 127/12 129/2 129/4 129/7 129/8 133/15 146/3 146/9 146/24 147/11 147/8 147/8 153/14 155/14 155/24 172/3</p> <p>states [6] 78/3 124/11 125/13 129/16 129/21 130/9</p> <p>staffing [2] 61/24 64/5</p> <p>station [10] 37/1 37/7 39/13 38/18 39/5 80/1 80/24 83/4 89/16 111/12</p> <p>status [1] 10/17</p> <p>stayed [3] 91/21 92/1 97/12</p> <p>step [1] 105/22</p> <p>stepping [1] 113/22</p> <p>Stegitz [3] 33/20 174/2 174/13</p> <p>still [16] 13/10 39/4 59/24 62/17 63/4 63/7 64/7 65/18 76/9 76/12 82/9 84/3 94/12 96/7 107/16 148/23</p> <p>Stinson [1] 75/6</p> <p>stop [1] 17/3</p> <p>stopwatching [3] 8/14 8/15 21/11</p> <p>stole [1] 64/6</p> <p>Stony [2] 79/22 79/24</p> <p>stood [1] 75/25</p> <p>stop [13] 27/1 27/10 40/7 61/8 62/21 63/2 76/7 76/10 78/20 95/14 109/8 148/10 161/11</p> <p>stopped [21] 18/17 19/15 39/24 60/6 63/24 75/11 75/12 75/18 77/14 77/15 81/14 84/11 84/13 87/13 87/17 94/19 95/11 114/2 158/2 161/9 162/17</p> <p>straight [1] 62/20</p> <p>street [18] 39/11 39/12 59/4 66/11 76/23 80/1 81/2 81/5 81/22 83/4 83/9 84/6 91/17 92/16 97/11 104/15 157/2 158/21</p> <p>streets [1] 39/4</p> <p>strike [3] 62/16 127/1 164/4</p> <p>striking [4] 40/4 40/16 121/20 128/16</p> <p>struck [5] 13/9 105/18 121/22 125/2 133/7</p> <p>struggle [8] 27/15 64/25 65/10 125/17 130/10 130/20 131/14 133/6</p> <p>struggled [1] 82/6</p> <p>struggling [4] 85/7 85/12 85/20 122/1</p> <p>STUDENT [4] 1/13 2/3 3/2 35/21</p> <p>Sub [4] 128/19 126/24 128/6 165/11</p> <p>Subdivision [15] 18/21 19/1 19/24 20/16 21/23 21/25 24/4 24/9 24/13 25/8 25/13 45/18 49/7 55/23 56/8</p> <p>subject [14] 21/3 36/24 40/5 40/6 40/8 40/14 40/15 40/18 56/19 64/12 71/5 71/8 71/10 89/25</p> <p>subjects [1] 44/21</p> <p>submit [1] 27/2</p> <p>submitted [1] 119/18</p> <p>subpoena [2] 15/21 16/19</p> <p>subpoenaed [2] 73/15 73/18</p> <p>subpoenas [3] 14/7 15/25 16/3</p> <p>Subscribed [1] 171/21</p>	<p>subsequent [2] 57/1 90/8</p> <p>substantial [3] 18/12 25/2 137/7</p> <p>suck [2] 3/24 152/6</p> <p>suddenly [1] 162/17</p> <p>sue [1] 152/8</p> <p>sued [1] 151/25</p> <p>suffered [1] 40/5</p> <p>Sufolk [77] 6/25 7/13 14/19 14/20 14/22 22/6 27/20 30/8 30/23 31/6 31/12 37/20 37/22 40/24 41/3 44/20 45/13 46/6 46/8 48/11 49/4 49/17 51/11 52/2 52/9 52/15 54/3 55/3 67/24 68/3 68/6 68/13 68/20 74/11 77/25 79/16 82/24 93/13 97/13 97/22 98/5 98/19 99/17 99/22 99/24 100/13 100/14 101/4 101/5 101/11 104/9 104/10 108/11 111/15 112/22 113/1 115/21 115/23 119/9 119/10 121/1 121/2 121/21 125/5 127/7 127/8 128/24 129/1 131/5 132/21 133/12 152/15 154/3 156/14 159/1 159/5 173/1</p> <p>suggest [1] 155/6</p> <p>suggested [1] 90/16</p> <p>suing [1] 152/3</p> <p>SURTE [1] 21/5</p> <p>Sunday [1] 37/2</p> <p>superior [2] 56/23 90/4</p> <p>supervisor [1] 34/12</p> <p>supporting [1] 119/17</p> <p>supports [1] 21/20</p> <p>suppose [3] 140/24 140/25 141/3</p> <p>supposed [2] 16/11 59/6</p> <p>sure [25] 6/10 15/1 17/13 17/14 44/11 57/14 58/2 76/3 77/1 82/8 113/2 142/15 150/9 152/10 152/17 153/7 153/22 161/20 163/9 164/20 164/22 165/15 166/11 168/6 170/15</p> <p>surrounding [1] 115/5</p> <p>suspect [1] 169/7</p> <p>sustains [4] 13/19 28/17 31/20 165/22</p> <p>sustained [10] 27/19 29/19 30/10 42/7 42/7 71/5 155/1 161/2 164/4 169/16</p> <p>swear [4] 77/19 82/19 86/8 110/21</p> <p>swelling [2] 124/9 124/13</p> <p>swinging [1] 106/2</p> <p>sworn [14] 33/19 74/14 77/20 79/12 79/20 82/20 83/1 86/9 108/13 110/22 150/15 152/18 155/10 171/21</p> <p>swing [1] 105/24</p> <p>T</p> <p>take [1] 92/2</p> <p>Taggart [2] 2/22 5/13</p> <p>take [20] 5/12 9/18 13/18 13/18 32/24 69/22 70/2 70/4 72/9 72/11 130/2 137/19 144/23 145/18 147/18 152/19 153/4 153/19 154/8 155/25</p> <p>taken [14] 29/12 33/2 66/24 67/21 70/6 77/17 86/6 89/20 106/25 110/19 147/22 150/18 156/13 174/4</p> <p>takes [1] 159/20</p> <p>taking [4] 12/4 59/6 66/9 73/25</p> <p>talk [5] 75/10 78/11 78/21 79/3 109/6</p> <p>talking [4] 60/20 60/21 94/4 97/11</p> <p>Tara [2] 2/21 5/21</p> <p>targeted [1] 140/6</p> <p>Tarver [1] 82/18</p> <p>tavern [1] 91/18</p> <p>tax [33] 23/20 24/17 38/20 39/1 48/23 51/2 59/25 75/11 75/15 75/15 75/17 75/19 76/7 76/8 76/12 76/21 76/24 77/1 77/6 77/13 77/15 80/4 83/7 109/7 109/8 109/11 109/17 109/19 110/11 111/12 113/16 125/16 131/16</p> <p>tactical [4] 22/22 23/23 111/6 133/9</p> <p>teach [1] 60/16</p> <p>team [18] 17/4 35/12 35/19 36/5 36/13 36/24</p>
---	---	---

T		
team... [12] 37/3 38/2 43/25 44/14 44/16 44/17 114/22 115/2 115/6 122/4 143/15 163/2	16/23 29/13 31/22 31/23 44/17 47/11 47/15 48/10 51/13 51/14 51/15 51/21 55/17 67/20 68/1 74/24 88/16 91/15 93/22 93/24 94/3 94/11 99/5 99/6 99/7 106/10 106/14 114/23 114/25 115/7 119/20 119/21 119/21 119/22 122/5 136/6 139/19 139/19 140/9 140/10 140/13 151/20 154/6 157/17 159/8 159/11 166/4	1... [9] 18/5 19/4 20/2 22/5 37/6 39/8 71/2 81/4 157/4
telephone [3] 15/20 86/19 86/24	they'll [1] 16/10	fires [1] 162/14
telephoned [1] 67/9	they're [4] 9/8 14/23 16/18 147/4	fissure [2] 124/9 124/13
tell [11] 20/25 28/6 28/8 28/11 67/25 85/17 92/23 93/9 93/23 97/20 102/7	they're [2] 146/6 166/4	fitted [2] 7/1 70/20
telling [4] 72/16 76/6 97/17 109/12	thing [7] 4/5 12/20 41/24 102/11 110/11 146/18 167/24	TL [1] 74/20
tem [6] 32/24 70/4 106/3 160/11 160/21 161/12	things [3] 133/16 156/25 160/4	TM [1] 6] 78/7 78/10 78/14 78/22 79/1 79/4
ten-second [1] 161/12	think [40] 4/1 5/3 9/16 10/1 12/9 12/24 13/2 13/4 17/2 31/8 31/18 31/23 32/9 44/3 61/18 71/19 72/3 72/11 73/1 74/7 77/11 83/12 85/1 85/13 97/8 98/2 109/6 113/3 131/3 137/1 141/6 145/11 145/13 146/1 146/22 159/17 162/8 166/4 167/18 170/23	to-wit [4] 118/20 126/20 134/13 135/23
terminated [1] 40/11	thinks [1] 42/2	today [10] 9/10 14/3 14/24 15/10 17/25 45/17 72/12 72/18 132/23 149/17
terminated [1] 10/15	third [7] 2/23 37/16 37/17 56/19 70/23 126/25 167/9	together [3] 67/1 89/3 90/17
terms [3] 14/1 17/01 170/1	thirteen [1] 12/15	told [24] 26/17 66/4 66/11 66/14 66/23 66/25 67/1 67/12 68/5 71/13 72/1 72/16 72/20 82/5 86/3 92/8 93/12 98/13 98/15 110/13 129/24 157/10 158/25 164/7
testified [2] 33/22 33/24	this [212]	Ton [1] 124/19
testifies [1] 121/22	Thomas [36] 7/16 7/20 18/9 19/10 20/12 22/23 38/21 45/2 46/9 52/25 53/22 54/2 54/16 79/8 79/16 82/20 83/5 100/25 101/7 101/16 104/5 104/13 104/19 116/1 119/13 121/4 121/6 121/18 121/20 122/12 123/18 124/17 127/10 150/14 152/12 172/22	Tonny [3] 85/25 86/1 86/1
testify [2] 150/13 154/7	those [30] 3/20 11/4 11/19 12/10 28/9 34/8 38/5 43/2 43/24 48/9 48/15 48/21 49/5 50/20 51/17 52/22 56/3 56/5 56/13 121/9 123/19 129/4 129/7 131/4 133/16 140/4 153/3 153/4 159/12 166/24	Tonny's [1] 86/1
testifying [1] 32/5	though [6] 14/9 63/6 85/16 122/17 125/1 166/21	tomorrow [9] 122/17 148/14 148/16 169/25 170/2 170/20 171/6 171/8 171/11
testimony [25] 4/2 4/5 21/14 42/19 69/14 107/9 112/6 112/11 112/13 149/25 150/3 150/13 150/16 150/18 152/12 152/18 152/21 153/2 153/17 153/21 153/23 155/3 155/11 169/1 174/4	thought [11] 5/6 60/9 76/2 86/2 87/10 93/15 95/1 110/6 115/20 120/12 138/13	Tonight [1] 83/6
than [14] 21/19 30/18 31/14 44/2 63/17 67/15 72/10 97/25 100/9 103/18 114/16 149/16 151/17 151/19	thousand [3] 117/2 163/15 164/4	too [2] 71/15 159/4
Thank [9] 25/19 41/8 41/22 48/1 50/8 107/14 136/9 156/8 158/2	threat [1] 60/12	took [18] 22/19 27/16 28/14 37/5 67/2 86/14 109/18 110/15 111/3 115/18 144/7 144/12 149/24 153/18 159/2 159/7 160/11 161/11
that [568]	threatening [1] 40/23	top [3] 46/19 78/3 131/23
that's [30] 10/1 15/22 17/5 45/17 48/3 79/23 79/24 112/16 12/20 125/11 131/18 135/18 139/3 139/16 139/20 139/21 146/18 146/18 146/22 148/10 153/21 156/18 157/10 158/25 159/5 159/14 164/8 167/12 168/23 169/13	three [53] 3/20 7/19 7/21 7/22 7/24 8/1 9/23 9/24 9/25 10/9 10/11 10/25 11/9 13/9 13/9 19/13 23/19 23/20 34/4 40/3 46/14 48/22 58/24 51/4 53/18 53/21 53/23 53/24 53/25 56/5 66/18 74/12 74/13 77/17 77/23 78/2 81/23 82/17 82/25 86/6 86/12 88/23 89/12 91/3 94/17 94/17 95/1 107/23 108/10 110/19 137/8 144/2 158/22	Torres [1] 86/18
their [19] 9/24 28/12 31/20 38/11 38/19 39/7 40/21 56/13 68/1 83/19 83/23 91/15 93/2 93/23 109/2 114/23 122/6 146/10 169/10	three-page [16] 7/19 7/21 7/22 7/24 8/1 53/18 53/21 53/23 53/24 53/25 77/23 82/17 82/25 86/12 107/23 108/10	Torso [2] 96/4 129/20
them [35] 6/24 8/19 9/7 13/17 16/8 16/17 39/14 46/19 46/20 47/1 47/10 47/14 47/17 48/13 48/18 55/13 55/14 55/21 66/4 70/1 70/17 73/24 80/14 84/13 84/14 93/9 99/25 110/8 111/22 119/22 139/20 146/7 146/9 147/11 161/5	through [17] 20/21 23/17 36/22 39/4 40/4 42/12 42/13 55/12 56/4 86/23 101/3 101/6 104/8 104/11 112/17 141/18 174/6	total [2] 74/13 119/5
themselves [3] 28/2 28/14 39/3	thrown [2] 65/19 65/24	totally [2] 113/18 114/3
them [40] 47/13 9/25 10/3 15/17 19/16 26/19 28/7 39/20 40/17 52/12 57/19 59/3 61/4 61/16 61/20 64/3 65/6 65/18 65/20 66/3 66/8 66/10 66/10 66/25 67/18 67/19 67/21 70/17 73/1 73/23 74/4 76/10 76/12 77/4 80/17 81/2 81/16 81/23 82/2 84/9 84/24 85/24 89/1 92/16 105/17 105/23 108/24 119/3 125/14 129/20 132/1 140/8 143/5 144/16 148/13 157/2 158/7 158/21 160/19 160/23	time [72] 17/8 18/15 22/10 27/22 31/3 32/24 34/19 35/17 35/22 40/13 40/16 44/15 47/11 47/24 49/15 53/2 55/9 56/2 56/12 58/3 59/13 60/6 60/24 62/3 63/15 71/1 71/18 72/5 73/4 73/19 77/3 78/21 79/9 80/6 80/11 80/19 90/24 92/24 95/22 97/1 101/21 101/22 102/4 102/14 102/25 103/9 105/21 106/5 114/8 117/15 118/21 122/9 126/22 133/19 134/15 135/5 137/3 137/9 138/16 143/14 144/11 144/23 144/25 145/23 157/16 159/21 159/23 160/10 161/25 162/3 168/16 169/22	town [2] 148/1 148/20
there [57] 5/11 7/7 7/12 7/15 7/18 10/7 11/25 13/24 24/20 24/25 27/23 29/24 30/3 30/25 34/19 35/6 49/10 52/16 59/17 60/10 63/6 75/11 75/13 80/10 83/9 83/20 84/23 86/20 86/24 88/24 91/21 92/1 111/5 111/9 112/2 114/6 116/15 120/4 121/15 122/17 124/11 124/13 125/5 130/6 131/8 131/20 139/16 139/20 144/4 147/4 153/14 154/4 156/2 163/12 168/22 168/23 169/3	times [7] 19/13 85/2 106/4 121/23 125/4 127/8 167/7	towns [1] 89/13
there's [5] 30/3 74/13 114/14 139/21 147/5	timing [1] 14/1	try [4] 12/5 84/2 112/13 146/19
thereafter [1] 27/22	Timothy [1] 8/3	trying [16] 59/11 64/10 65/8 84/20 85/11 95/25 96/9 102/15 129/16 153/11 154/1 155/21 161/21 161/24 161/25 165/2
therefore [3] 3/18 25/14 164/19		thru [11] 39/5 39/15 75/4 75/8 77/6 92/14 92/17 92/24 93/10 110/12 162/3
thereof [2] 56/25 90/7		turned [10] 59/3 62/17 76/14 83/21 84/7 84/8 84/9 92/17 96/15 135/18
thereupon [1] 33/1		Tuesday [5] 59/1 59/7 75/4 92/10 92/19
these [11] 11/9 13/9 27/25 29/15 54/5 69/16 71/7 78/24 79/2 90/16 100/15		turns [1] 160/16
they [61] 9/20 9/23 10/1 10/3 10/14 10/15 10/16 10/16 10/18 14/7 15/24 16/5 16/7 16/7		tweeties [2] 81/8 157/7

<p>T</p> <p>twist [1] 65/17</p> <p>two [35] 7/15 21/22 27/16 27/25 46/18 47/9 53/8 57/13 58/8 58/17 60/3 81/3 84/4 84/6 84/11 85/1 91/5 91/18 91/19 91/23 91/24 95/13 98/4 99/3 100/22 115/11 123/1 136/4 148/21 148/25 153/8 156/14 157/3 158/25 159/6</p> <p>two-time [1] 60/3</p> <p>type [4] 34/25 59/18 92/25 167/14</p> <p>typical [1] 113/17</p>	<p>131/9 161/17</p> <p>using [2] 124/20/7</p> <p>usually [1] 167/11</p> <p>V</p> <p>vehicle [86] 19/13 20/14 23/25 38/25 39/18 39/20 39/21 39/22 39/24 39/25 40/1 40/6 40/8 40/14 40/15 40/16 40/19 50/9 59/15 59/19 59/24 60/1 60/6 60/15 61/5 61/8 61/17 61/19 61/25 62/4 62/5 62/9 62/10 62/11 62/12 62/13 62/14 62/16 62/19 62/22 62/23 63/2 63/4 63/7 63/12 63/13 63/23 64/21 64/22 65/3 65/7 65/15 65/21 66/24 88/7 93/4 93/6 93/9 93/16 94/14 96/1 96/6 97/9 99/21 105/16 111/17 111/18 112/1 112/14 112/23 113/17 113/22 114/9 114/10 117/3 119/4 125/18 129/17 163/16 163/23 165/18 166/5 166/14 167/20 167/28 168/20</p> <p>vehicles [6] 38/12 38/14 39/7 39/16 58/21 58/23</p> <p>vehicular [1] 97/8</p> <p>veracity [1] 155/13</p> <p>verbal [2] 39/19 59/25</p> <p>very [4] 30/22 68/17 114/6 114/10</p> <p>Veterans [1] 101/12</p> <p>via [3] 6/8 28/22 49/21</p> <p>vicinity [1] 97/7</p> <p>video [1] 87/8</p> <p>view [6] 30/9 31/24 42/6 69/18 93/11 153/13</p> <p>Village [2] 75/2 108/24</p> <p>violate [4] 12/6 28/25 118/22 126/23</p> <p>violated [9] 24/12 29/3 29/21 55/23 56/7 120/19 121/14 128/1 129/9</p> <p>violates [1] 13/20</p> <p>violation [14] 18/25 19/23 20/15 21/22 24/3 24/8 25/11 25/16 34/16 43/8 45/18 117/9 118/17 128/5</p> <p>violations [5] 31/4 92/1 21/9 25/7 43/20</p> <p>vision [1] 88/16</p> <p>vodkas [5] 91/5 91/6 91/13 91/19 91/24</p> <p>voluntarily [2] 56/22 90/3</p> <p>voluntariness [4] 146/2 146/24 147/11 147/15</p> <p>voluntary [1] 141/2</p>	<p>58/4 58/4 58/14 58/16 58/17 58/18 58/20 58/22 58/23 59/2 59/5 59/6 59/21 67/3 67/12 68/7 69/20 72/16 73/15 74/19 74/21 75/1 75/3 75/4 75/4 75/6 75/7 75/11 77/8 77/9 81/10 82/5 83/8 84/4 84/5 84/10 84/11 85/17 91/1 91/3 91/7 91/8 91/12 91/16 91/17 91/21 91/25 92/1 92/2 92/4 92/5 92/23 93/9 98/24 99/21 105/2 106/20 108/18 108/19 108/22 108/23 108/24 108/25 109/1 109/3 109/6 115/18 116/23 116/23 118/3 120/8 132/23 135/23 137/6 137/9 137/13 139/13 142/22 143/14 143/15 145/16 146/24 146/25 148/4 148/21 148/25 150/9 161/7 161/15 166/12 166/16 167/13 169/24 171/11</p> <p>we'd [2] 12/21 170/23</p> <p>we'll [14] 11/17 15/9 17/8 17/25 70/17 74/6 106/18 106/19 137/20 147/19 148/5 148/14 159/16 170/17</p> <p>we're [8] 21/11 33/3 70/12 72/13 107/2 148/4 155/6 155/8</p> <p>we've [2] 87/16 147/9</p> <p>weapons [39] 22/22 24/14 24/16 24/19 26/12 27/5 61/10 62/7 62/19 63/1 63/4 63/10 63/17 64/18 95/7 95/8 95/20 96/13 119/1 119/5 128/16 130/20 132/22 133/1 133/8 133/8 135/24 139/11 139/14 139/16 139/20 139/21 139/22 140/23 141/1 141/7 141/9 141/11 166/22</p> <p>weapons [1] 140/10</p> <p>wearing [1] 106/13</p> <p>week [2] 57/4 80/8</p> <p>weight [2] 44/8 136/24</p> <p>well [27] 9/9 13/7 38/5 46/23 49/23 58/11 71/21 73/17 103/11 112/6 117/13 123/2 134/14 140/1 141/10 145/11 145/23 150/10 152/11 152/19 153/10 153/19 154/10 155/25 161/13 167/5 168/2</p> <p>went [27] 64 168 58/1 58/3 58/4 58/4 63/12 77/13 81/11 82/10 82/12 88/21 91/12 91/17 97/4 101/22 108/23 108/24 111/22 111/21 116/20 130/12 160/3 160/4 160/18 160/22 160/22</p> <p>were [94] 6/16 6/22 7/8 16/3 16/5 16/7 20/19 22/9 27/6 28/11 29/4 29/12 31/23 31/25 34/19 38/10 38/14 39/4 40/20 43/2 43/24 44/13 44/17 44/21 44/22 48/10 49/2 52/14 52/16 52/22 57/17 58/14 58/16 58/17 58/18 59/5 59/21 67/4 67/6 67/12 68/1 68/21 72/16 74/19 74/21 74/24 75/1 75/3 75/7 75/11 75/15 83/8 84/4 84/10 85/17 88/16 88/24 88/25 93/22 93/24 94/3 94/11 99/6 99/21 100/3 100/16 105/11 106/10 106/14 108/18 108/20 108/21 108/22 109/1 109/7 121/15 136/16 138/23 142/8 142/8 142/22 143/22 147/2 149/3 149/16 150/25 152/3 153/14 153/15 154/6 157/16 159/8 161/5 171/2</p> <p>were't [2] 73/18 157/15</p> <p>Wesson [10] 18/11 19/12 20/10 22/12 23/3 23/6 24/15 25/10 134/17 140/16</p> <p>west [12] 39/11 39/12 79/25 80/22 81/2 81/2 83/3 83/8 84/5 92/15 104/15 157/2</p> <p>westward [2] 39/11 80/21</p> <p>wheat [156] 67/3 91/2 91/8 111/3 12/8 16/23 17/1 17/8 21/19 24/1 28/3 28/7 28/8 28/12 28/12 28/14 30/24 34/8 35/10 36/11 41/12 41/24 42/1 42/2 42/2 43/2 43/9 43/19 44/3 45/7 45/21 45/22 46/1 46/4 46/12 48/9 48/21 49/5 50/21 51/9 51/17 52/1 52/20 52/22 57/14 60/20 66/25 72/8 73/2 83/11 87/9 93/22 94/9 94/10 97/14 97/23 97/24 98/19 98/21 101/18 102/4 102/7 105/6 105/13 105/13 107/10 109/10 110/2 113/3 113/12 115/1 115/18 115/19 116/3 116/7 116/18</p>
<p>U</p> <p>U-turn [3] 75/8 77/6 110/12</p> <p>uh [2] 79/16 105/21</p> <p>ultimate [1] 52/3</p> <p>ultimately [4] 27/11 42/14 128/17 143/24</p> <p>under [24] 3/13 18/2 24/22 25/6 46/2 64/6 65/17 71/5 82/7 95/21 103/19 107/16 113/20 120/21 134/12 134/16 137/10 148/23 150/17 152/8 153/2 154/18 156/19 159/4</p> <p>underlying [1] 155/14</p> <p>underneath [1] 79/19</p> <p>understand [9] 41/22 78/4 78/23 87/1 109/10 163/23 164/15 166/10 167/16</p> <p>understanding [5] 3/11 3/16 14/2 16/4 51/9</p> <p>unfair [1] 32/12</p> <p>unfamiliar [1] 92/7</p> <p>unfortunate [2] 32/5 73/21</p> <p>uniform [3] 138/3 138/10 138/10</p> <p>uniforms [1] 20/4</p> <p>union [3] 25/24 73/11 107/5</p> <p>unit [3] 7/6 21/1 21/6 33/13 33/25 34/3 53/13 56/17 89/10 89/23 142/18 142/21 143/13 143/20</p> <p>unjustifiable [1] 136/16</p> <p>unlawful [9] 18/7 19/5 45/18 45/22 45/24 52/6 115/13 120/20 165/11</p> <p>unless [3] 14/11 29/4 69/17</p> <p>unlock [1] 64/15</p> <p>unlocked [1] 64/18</p> <p>unrelated [1] 141/4</p> <p>until [15] 15/6 59/6 68/9 72/12 78/21 84/8 96/24 97/9 97/12 144/14 145/21 153/25 160/22 170/9 170/17</p> <p>up [87] 6/5 16/11 16/23 24/20 26/3 26/19 27/14 28/4 35/14 35/18 35/24 39/15 39/21 39/24 40/15 46/16 53/4 53/10 53/15 53/18 53/21 55/11 59/25 60/6 62/1 65/20 65/22 65/25 72/12 73/24 75/9 75/12 75/19 76/2 76/21 77/6 80/17 81/17 82/2 83/9 84/1 84/16 85/6 88/3 88/10 90/14 90/21 93/5 93/14 93/21 94/6 94/16 95/5 95/5 95/10 95/12 95/17 96/16 96/18 97/3 103/17 105/19 105/23 107/20 109/8 109/17 113/1 117/12 117/16 118/3 122/10 122/22 122/22 125/16 125/16 126/3 131/23 131/24 134/8 135/7 136/5 145/22 147/10 151/12 157/1 158/16 161/6</p> <p>upholstery [1] 164/2</p> <p>upon [11] 11/15 105/5 105/5 114/16 118/17 119/7 126/19 127/5 134/11 153/24 155/10</p> <p>upper [2] 96/4 129/19</p> <p>upset [1] 97/5</p> <p>us [32] 14/7 45/17 61/20 63/5 65/23 65/23 66/22 73/12 74/3 75/9 75/11 77/13 77/14 77/15 79/3 83/10 83/21 83/22 83/23 83/25 83/25 84/1 84/2 84/3 84/3 90/19 90/19 103/2 103/2 109/12 126/21 166/25</p> <p>use [11] 97/9 20/6 20/8 38/3 38/5 48/18 136/11 138/5 142/3 147/7 155/23</p> <p>used [8] 50/22 56/25 60/23 78/9 90/8 130/6</p>	<p>W</p> <p>wait [1] 41/19</p> <p>waited [2] 77/9 84/8</p> <p>waiting [1] 59/21</p> <p>waiver [3] 54/24 78/23 90/6</p> <p>walked [2] 58/20 61/5</p> <p>walking [7] 81/19 87/12 91/22 93/8 94/13 109/14 158/19</p> <p>want [23] 15/7 17/12 17/16 17/20 35/14 60/22 60/24 71/24 74/3 78/16 104/23 105/10 122/17 137/19 139/19 145/1 148/4 160/1 165/24 168/5 168/6 170/8 171/1</p> <p>wanted [6] 6/3 8/17 14/6 17/15 68/6 171/6</p> <p>was [446]</p> <p>wasn't [13] 28/6 80/11 82/8 83/11 84/24 104/25 140/17 140/20 142/2 159/4 161/17 161/20 161/25</p> <p>watching [1] 93/10</p> <p>water [1] 58/11</p> <p>waving [2] 93/16 109/11</p> <p>way [18] 13/16 26/6 27/23 30/20 31/16 38/19 49/2 56/24 58/24 80/15 90/5 92/20 102/2 103/23 103/25 114/14 144/20 151/9</p> <p>ways [1] 32/12</p> <p>we [130] 64 87/18 91/1 10/10 10/20 10/24 11/4 11/15 12/1 14/4 14/6 15/7 15/9 15/21 16/8 16/15 16/20 17/2 17/3 21/18 25/14 28/10 29/8 32/7 32/13 32/15 42/10 42/11 44/3 57/10 57/12 57/17 57/19 57/24 58/1</p>	<p>we're [8] 21/11 33/3 70/12 72/13 107/2 148/4 155/6 155/8</p> <p>we've [2] 87/16 147/9</p> <p>weapons [39] 22/22 24/14 24/16 24/19 26/12 27/5 61/10 62/7 62/19 63/1 63/4 63/10 63/17 64/18 95/7 95/8 95/20 96/13 119/1 119/5 128/16 130/20 132/22 133/1 133/8 133/8 135/24 139/11 139/14 139/16 139/20 139/21 139/22 140/23 141/1 141/7 141/9 141/11 166/22</p> <p>weapons [1] 140/10</p> <p>wearing [1] 106/13</p> <p>week [2] 57/4 80/8</p> <p>weight [2] 44/8 136/24</p> <p>well [27] 9/9 13/7 38/5 46/23 49/23 58/11 71/21 73/17 103/11 112/6 117/13 123/2 134/14 140/1 141/10 145/11 145/23 150/10 152/11 152/19 153/10 153/19 154/10 155/25 161/13 167/5 168/2</p> <p>went [27] 64 168 58/1 58/3 58/4 58/4 63/12 77/13 81/11 82/10 82/12 88/21 91/12 91/17 97/4 101/22 108/23 108/24 111/22 111/21 116/20 130/12 160/3 160/4 160/18 160/22 160/22</p> <p>were [94] 6/16 6/22 7/8 16/3 16/5 16/7 20/19 22/9 27/6 28/11 29/4 29/12 31/23 31/25 34/19 38/10 38/14 39/4 40/20 43/2 43/24 44/13 44/17 44/21 44/22 48/10 49/2 52/14 52/16 52/22 57/17 58/14 58/16 58/17 58/18 59/5 59/21 67/4 67/6 67/12 68/1 68/21 72/16 74/19 74/21 74/24 75/1 75/3 75/7 75/11 75/15 83/8 84/4 84/10 85/17 88/16 88/24 88/25 93/22 93/24 94/3 94/11 99/6 99/21 100/3 100/16 105/11 106/10 106/14 108/18 108/20 108/21 108/22 109/1 109/7 121/15 136/16 138/23 142/8 142/8 142/22 143/22 147/2 149/3 149/16 150/25 152/3 153/14 153/15 154/6 157/16 159/8 161/5 171/2</p> <p>were't [2] 73/18 157/15</p> <p>Wesson [10] 18/11 19/12 20/10 22/12 23/3 23/6 24/15 25/10 134/17 140/16</p> <p>west [12] 39/11 39/12 79/25 80/22 81/2 81/2 83/3 83/8 84/5 92/15 104/15 157/2</p> <p>westward [2] 39/11 80/21</p> <p>wheat [156] 67/3 91/2 91/8 111/3 12/8 16/23 17/1 17/8 21/19 24/1 28/3 28/7 28/8 28/12 28/12 28/14 30/24 34/8 35/10 36/11 41/12 41/24 42/1 42/2 42/2 43/2 43/9 43/19 44/3 45/7 45/21 45/22 46/1 46/4 46/12 48/9 48/21 49/5 50/21 51/9 51/17 52/1 52/20 52/22 57/14 60/20 66/25 72/8 73/2 83/11 87/9 93/22 94/9 94/10 97/14 97/23 97/24 98/19 98/21 101/18 102/4 102/7 105/6 105/13 105/13 107/10 109/10 110/2 113/3 113/12 115/1 115/18 115/19 116/3 116/7 116/18</p>

<p> wheat [80] 116/23 117/8 118/2 118/15 119/16 119/24 120/18 120/21 120/23 121/12 123/10 123/23 124/17 124/22 125/23 126/17 127/17 128/4 128/8 128/19 128/22 129/7 130/14 130/17 131/12 131/18 132/12 133/4 133/10 134/10 134/24 136/2 136/6 136/14 137/13 138/6 138/6 138/12 139/3 139/9 139/9 139/22 139/24 139/25 140/1 143/14 144/23 144/25 145/3 145/6 146/19 148/20 149/3 149/14 150/3 150/3 150/5 150/7 150/11 151/3 151/6 153/7 153/21 153/22 155/25 157/10 158/25 160/18 161/13 161/20 163/1 163/3 163/7 164/6 164/15 164/20 165/8 165/25 167/16 169/13 wheat's [9] 9/5 11/24 118/12 123/9 126/14 132/9 134/7 135/22 152/4 whatever [2] 14/23 111/20 wheel [1] 96/16 when [50] 24/23 26/13 34/23 49/2 51/6 58/22 63/9 63/13 64/13 65/22 71/4 72/6 72/7 72/18 72/25 73/24 82/11 83/21 84/11 85/4 85/13 85/14 85/17 85/19 87/8 88/22 88/25 92/14 92/17 93/18 94/25 95/10 98/9 110/3 110/8 114/2 114/5 114/23 119/1 129/15 134/17 136/18 144/4 146/18 147/11 149/7 152/6 153/4 160/22 161/4 where [28] 26/7 26/21 29/7 29/11 41/3 49/1 51/7 52/10 59/11 60/14 62/17 63/25 65/12 72/18 76/18 85/14 91/12 91/18 110/10 121/18 130/12 131/16 132/19 133/2 133/6 154/1 154/12 155/4 where'd [2] 22/20 22/21 WHEREOF [1] 174/8 Whetstone [6] 41/20 42/22 70/5 106/25 147/21 171/15 whether [13] 12/1 25/1 42/5 111/24 121/13 146/13 155/3 166/2 168/14 168/18 169/16 169/17 169/17 which [68] 7/1 7/1 13/10 15/13 15/25 18/3 18/24 19/22 23/19 23/20 27/25 31/22 37/5 46/24 48/10 48/24 50/17 51/13 52/4 57/8 57/22 58/3 58/19 60/23 62/19 64/1 65/18 70/19 72/23 73/15 74/20 75/2 79/6 87/13 87/21 88/1 88/8 92/15 93/12 105/2 105/3 111/17 111/18 114/7 115/16 118/17 119/8 119/19 120/8 121/16 126/1 127/6 129/11 133/24 134/11 143/14 150/17 154/22 167/1 170/3 while [21] 18/6 19/5 28/3 38/16 38/18 58/2 59/23 61/6 63/17 66/9 71/3 78/13 90/15 99/9 99/24 118/21 126/22 128/16 129/21 130/15 134/15 white [38] 38/20 57/22 59/25 74/24 80/3 80/17 80/25 81/6 81/8 81/12 81/14 81/18 81/19 81/22 83/20 83/22 87/12 87/17 87/19 87/21 88/1 88/7 88/10 88/13 88/13 88/15 93/12 93/20 94/5 98/5 105/14 108/22 109/7 157/5 157/17 158/17 158/18 158/21 Whistle [1] 72/15 who [46] 5/11 14/21 20/25 26/2 27/13 27/21 28/6 28/6 28/10 28/20 28/22 29/16 30/2 30/7 30/19 31/2 31/5 31/12 31/25 45/1 57/23 58/25 67/25 72/15 72/20 73/9 81/7 81/13 81/21 89/10 90/23 94/7 99/5 99/14 100/5 110/6 127/1 143/1 143/19 143/23 145/24 156/18 157/6 158/20 159/6 167/13 who's [1] 152/8 whole [1] 97/1 wholly [2] 30/14 31/7 whom [2] 28/11 29/16 whose [2] 14/15 132/22 </p>	<p> twice [81] 43/22 44/11 60/20 64/22 127/21 138/25 151/14 167/4 wife [12] 38/15 57/7 95/1 wife [48] 4/1 4/2 4/8 9/18 11/1 14/14 15/24 15/25 16/12 20/24 20/25 21/14 21/18 21/18 22/1 22/8 22/11 22/18 22/24 23/4 23/12 23/17 24/11 24/19 24/25 25/15 28/4 28/5 28/6 28/10 28/11 29/1 30/3 30/24 31/19 32/13 41/4 42/14 44/7 47/15 78/8 78/16 78/19 119/21 131/15 131/16 146/10 169/24 Willard [2] 67/23 68/18 Williams [7] 2/23 5/18 67/19 68/10 99/14 101/5 104/10 willing [1] 154/11 window [44] 19/17 23/2 23/23 24/21 27/8 40/10 48/25 51/24 52/12 60/7 60/8 60/9 60/14 61/2 61/6 64/17 71/9 76/24 81/5 82/2 82/3 85/5 87/11 88/21 88/22 89/1 93/21 95/19 102/2 105/17 116/21 116/21 119/4 121/17 121/19 125/15 130/19 130/25 157/5 158/4 158/5 163/25 168/25 169/17 windshield [11] 23/21 40/5 46/13 46/14 48/23 50/18 64/6 64/8 87/15 119/3 163/24 wish [1] 79/3 wit [4] 118/20 126/20 134/13 135/23 withdrawn [1] 120/11 within [8] 6/16 6/19 11/7 38/4 60/5 71/3 93/17 131/16 without [11] 18/8 28/1 28/13 30/10 30/18 78/19 89/3 112/2 141/7 159/19 164/12 witness [32] 14/3 17/12 28/6 28/20 28/22 32/19 32/21 33/6 33/18 35/24 41/17 41/20 41/24 42/1 42/22 44/2 47/25 50/10 79/10 107/6 107/12 112/25 118/10 126/12 133/23 145/12 145/14 154/25 155/7 155/9 166/8 174/8 witness's [2] 42/11 112/6 witnesses [30] 14/5 14/10 14/15 14/18 15/19 16/3 16/13 27/21 28/2 28/7 28/9 28/10 28/14 30/7 30/11 31/23 31/25 44/22 73/14 73/17 124/17 124/25 144/17 144/20 146/14 149/11 149/15 149/16 170/20 171/8 women [2] 91/14 91/25 won't [1] 171/5 word [3] 32/16 105/10 155/23 words [9] 60/21 60/23 60/24 102/16 109/9 138/15 153/23 157/14 164/16 work [5] 148/21 148/25 159/9 170/9 170/13 workers' [1] 100/10 working [8] 80/4 80/8 83/7 143/17 146/16 149/3 149/5 149/9 worth [1] 164/5 would [84] 10/10 11/4 11/12 11/12 12/6 12/8 13/5 13/9 13/10 13/11 13/21 16/25 24/1 26/7 28/16 28/17 28/24 28/25 28/25 30/11 30/14 31/25 35/22 36/1 41/13 46/16 47/24 49/23 50/8 50/18 53/2 55/9 55/13 55/14 56/9 56/12 63/10 64/22 72/11 72/18 73/12 79/7 92/9 113/12 123/9 123/23 135/3 137/9 138/6 138/7 138/9 138/10 138/23 139/1 139/7 139/9 139/9 139/11 141/3 141/6 141/13 147/17 147/14 150/15 151/15 152/11 152/16 152/18 152/20 152/22 153/3 153/3 155/5 155/23 160/2 160/12 160/12 160/23 163/6 165/12 167/4 168/6 170/10 170/12 wouldn't [2] 139/13 152/19 wounds [1] 40/5 writing [2] 89/10 100/16 within [7] 48/14 80/19 82/18 100/9 119/13 127/11 143/11 wrong [9] 42/9 42/9 75/4 92/14 92/16 92/20 112/10 112/17 167/15 </p>	<p> Y Yeah [7] 72/1 74/6 103/1 122/19 122/21 156/4 165/6 years [6] 34/4 74/15 83/2 86/15 108/14 144/2 yell [2] 61/1 61/12 yelled [6] 60/13 81/7 81/10 81/18 157/6 158/18 yelling [13] 61/6 75/13 75/16 76/5 76/10 76/12 81/17 84/13 84/23 87/24 88/8 95/21 158/17 yelling' [1] 94/11 yellow [2] 60/3 62/14 yes [147] 4/25 5/18 94 10/19 17/18 17/21 32/25 34/1 34/7 34/22 35/2 35/5 35/9 35/16 36/10 36/16 36/18 41/11 43/1 43/18 44/15 44/25 45/5 45/20 45/25 48/3 48/8 48/14 48/17 48/20 50/15 50/19 50/24 51/20 52/19 56/1 56/11 60/3 70/1 79/1 79/4 103/10 103/24 107/7 107/13 107/17 111/4 111/8 111/12 112/24 113/11 117/7 118/14 120/6 120/16 121/10 123/15 123/22 124/1 124/3 124/6 125/8 125/10 125/22 126/16 126/22 127/15 128/3 128/21 129/6 130/4 130/16 131/7 131/11 132/11 132/18 132/24 133/3 133/18 134/9 134/22 136/1 136/13 137/16 139/15 139/18 140/7 140/11 140/12 140/15 141/3 142/10 142/19 143/4 143/18 144/3 144/9 144/19 144/22 148/24 149/18 149/20 149/21 149/23 151/2 151/3 151/14 151/7 151/8 151/11 151/21 151/24 152/2 152/5 152/22 156/16 156/23 157/23 157/25 158/1 158/2 158/3 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DISTLER

1 - - - - -x
2 POLICE DEPARTMENT COUNTY OF
3 NASSAU, NEW YORK,

CASE NO. 8118

4 AGAINST

5 ANTHONY DILEONARDO POLICE
6 OFFICER, SERIAL NO. 9013
- - - - -x

COPY

7 NASSAU COUNTY POLICE DEPARTMENT

8 1490 FRANKLIN AVENUE

9 MINEOLA, NEW YORK 11501

10 MARCH 11, 2014

11 9:40 a.m.

12
13
14 CONTINUATION

15
16 BEFORE: INSPECTOR MICHAEL STUDDERT

17 HEARING OFFICER
18
19
20
21
22
23
24
25

DISTLER

1 A P P E A R A N C E S:

2
3 HEARING OFFICER: INSPECTOR MICHAEL STUDDERT

4
5 NASSAU COUNTY POLICE DEPARTMENT

6 ATTORNEYS FOR CLAIMANT

7 1490 FRANKLIN AVENUE

8 MINEOLA, NEW YORK 11501

9 BY: LESLI P. HILLER, ESQ.

10 FILE # 8118

11
12 BARKET, MARION, EPSTEIN & KEARON, LLP

13 ATTORNEYS FOR RESPONDENT

14 666 OLD COUNTRY ROAD

15 SUITE 700

16 GARDEN CITY, NEW YORK 11530

17 BY: BRUCE A. BARKET, ESQ.

18
19 ALSO PRESENT:

20 ISRAEL SANTIAGO, SERGEANT COMMANDING OFFICER

21 TARA COMISKEY, DETECTIVE SERGEANT LEGAL BUREAU

22 KAREN TAGGART, ESQ., LEGAL BUREAU

23 WILLIAM PURCELL, THIRD PRECINCT PBA TRUSTEE

24 JOANNE DELORENZO, LEGAL BUREAU

25

DISTER

1 HEARING OFFICER STUDDERT: This
2 hearing is now in session. We can get our
3 counsel for the record.

4 MS. HILLER: Lesli Hiller for the
5 Nassau County Police Department.

6 MR. BARKET: Bruce Barket for Officer
7 Dileonardo.

8 HEARING OFFICER STUDDERT: Let the
9 record reflect that Officer Dileonardo is
10 present, as is his PBA representative.
11 Also can I get the observers in the room.

12 MS. TAGGART: Karen Taggart, Nassau
13 County Police Department Legal Bureau.

14 MS. DELORENZO: Joanne DeLorenzo,
15 Nassau County Police Department Legal
16 Bureau.

17 MR. PORCELL: William Purcell.

18 MS. COMISKEY: Tara Comiskey,
19 Detective Sergeant Legal Bureau.

20 MR. SANTIAGO: Detective Sergeant
21 Israel Santiago, Commanding Officer of
22 Legal Bureau.

23 MR. BARKET: Can I ask a — well,
24 continue what you are saying and I will
25 ask my question.

DISTLER

1 MS. HILLER: Yeah? Okay. So
2 preliminarily before we start with our
3 witness, I just wanted to correct an error
4 I made earlier and I'd like to withdraw
5 from evidence Exhibit 19 and replace it
6 with the correct 209 that reflects one of
7 the charges that we're here before the
8 Court today on, or the hearing officer,
9 which would be the 209 that reflects
10 Count III in the 210, the assault.

11 I'm going to pass up a copy of that.
12 I already passed over a copy to counsel.

13 (209 Reflecting Assault was marked as
14 Department's Exhibit 19A for evidence, as
15 of this date.)

16 HEARING OFFICER STUDDERT: Is there
17 anything else?

18 MS. HILLER: Not for me, but I think
19 counsel had a question.

20 MR. BARKET: Inspector, how does your
21 relationship with the legal bureau work?
22 Because I was told that during the course
23 of the hearing, you would take advice or
24 hints from one of the attorneys in the
25 Legal Bureau.

DISTLER

1 HEARING OFFICER STUDDERT: Just
2 procedural type of stuff and questions I
3 might have.

4 MR. BARKET: Okay. There is, I'll
5 admit, my naivety or ignorance here, but
6 the Legal Bureau is the one, if you will,
7 prosecuting this case on behalf of the
8 Commissioner, so it seems like an odd
9 situation to have one of the individuals
10 that works with Miss Hiller daily be
11 giving you advice about procedure.

12 HEARING OFFICER STUDDERT: Record's
13 noted.

14 MR. BARKET: I'm not saying it's
15 right or right. It strikes me as odd,
16 kind of like the law secretary of a judge
17 being a member of the District Attorney's
18 Office. It would be disconcerting to
19 those being prosecuted by the District
20 Attorney's Office.

21 MR. SANTIAGO: I understand you
22 concern, but we are members of the Legal
23 Bureau --

24 MS. HILLER: I'm the only one that
25 does discipline.

DISTLER

1 MR. SANTIAGO: — that's designated
2 as prosecutor. Our role here is to make
3 sure that due process standards are met,
4 any concerns, both from the hearing
5 officer, from the prosecutor himself,
6 which I clarify.

7 MR. BARKET: Which one gives me
8 private advice?

9 MR. SANTIAGO: I'll step outside with
10 you. No problem. I do it all the time
11 when we have pistol hearings.

12 MR. BARKET: Okay. I'll take you up
13 on that.

14 MS. HILLER: Haven't I answered any
15 of your procedure questions yet today,
16 Bruce?

17 MR. BARKET: I'm just saying, it
18 just —

19 MR. SANTIAGO: Let the record reflect
20 that Ms. —

21 MR. BARKET: So you'll chat with me
22 about the procedures and rules and —

23 MR. SANTIAGO: Yes, definitely. You
24 know I will. Ad nauseam.

25 MR. BARKET: Okay. I'll take you up

DISTLER

1 on that when we're done this morning.

2 HEARING OFFICER STUDDERT: Okay.

3 MR. BARKET: Thanks.

4 HEARING OFFICER STUDDERT: Call the
5 witness.

6 MS. HILLER: It's Mr. Barket's
7 witness at this point, I think, for cross,
8 Jo-Ann Distler.

9 HEARING OFFICER STUDDERT: Can I have
10 those exhibits up here in case we need to
11 refer to them?

12 MR. BARKET: May I proceed?

13 HEARING OFFICER STUDDERT: Yes, you
14 may.

15 **CROSS-EXAMINATION**

16 **BY MR. BARKET:**

17 Q Good morning.

18 A Good morning.

19 HEARING OFFICER STUDDERT: Just
20 before we start, you are still under oath,
21 okay?

22 THE WITNESS: Yes.

23 **BY MR. BARKET**

24 Q I'm holding something. Do you recognize
25 this? It is part one. It looks like the report —

DISTLER

1 the larger report that you drew up after this
2 investigation was completed.

3 A Okay.

4 Q It has in it a number of things that you
5 reviewed, and I just want to go through it with you
6 and make sure that I'm right about that?

7 MS. HILLER: Are you moving the IAU
8 report into evidence?

9 MR. BARKET: Oh, no. No, no.

10 Q So I take you it you spoke with all the
11 witnesses that are contained in this larger report?

12 A If that's the report that I prepared, yes.
13 No, not necessarily.

14 Q You or somebody in your team did?

15 A Somebody in my team or somebody from
16 Suffolk County.

17 Q Okay. Then you reviewed the reports
18 before making your recommendations?

19 A Yes.

20 Q I take it that you formed an opinion about
21 this?

22 A Yes.

23 Q Okay. Anything I can say to change your
24 mind about that?

25 A No.

DISTLER

1 Q So I'm not going to take a lot of your
2 time, then, this morning in trying to do that
3 because we'll just agree to disagree.

4 A Okay.

5 Q But there are a few questions I want to
6 ask. For starters, you said you spoke to Mr. Klung,
7 or Mr. Klung was spoken to?

8 A Klug?

9 Q Klug, sorry.

10 A Yes.

11 Q That's a statement that you actually took;
12 is that right?

13 A Yes.

14 Q Where did you do that?

15 A At 422 Oakwood Road.

16 Q That's where he lives?

17 A Correct. At that time.

18 Q Am I correct that — have you spoken to
19 civilians in the past who have witnessed a part of a
20 violent episode?

21 A Yes.

22 Q Okay. It's no uncommon for witnesses to
23 get things remarkably wrong, because they're not
24 accustomed to observing a high-pressure violent
25 situation; is that right?

DISTRICT

1 A At times.

2 Q In this case -- Mr. Klug?

3 A Klug, K-L-U-G.

4 Q Klug.

5 -- Eric got a number of things wrong;
6 is that right?

7 A Yes.

8 Q To begin with, he didn't actually see how
9 the incident started, did he?

10 A No.

11 Q He heard a gunshot and then went to his
12 window?

13 A Correct.

14 Q So whatever precipitated that gunshot, he
15 didn't see, has no knowledge of?

16 A Correct.

17 Q In addition to that, he said that the
18 female passenger in the car that was being shot at
19 got out of the car?

20 A Yes.

21 Q That's not right, is it?

22 A That's was not my conclusion.

23 Q That's not actually -- nobody said that
24 other than him; correct?

25 A Correct.

DISTLER

1 Q He was looking out his window. How much
2 distance was it between his window and where this
3 incident took place?

4 A Maybe 50 feet.

5 Q It was right in front of his house?

6 A Correct.

7 Q Okay. Dark out?

8 A Dark out.

9 Q Was he on the same side of the road as the
10 incident took place or the other side?

11 A Same side.

12 Q So the passenger door of that white Prius
13 would have been facing his house; yes?

14 A Yes.

15 Q So despite only being 50 feet away and
16 having an unobstructed view, I guess, of the Prius,
17 he still mistakenly thought that — I guess her name
18 is —

19 A Kristie Mondo.

20 Q — got out of the car when, in fact, she
21 didn't?

22 A Yes. Originally the vehicle was parallel
23 to Officer Dileonardo, the car he was driving at the
24 time. Then it backed up another additional 50 feet,
25 so I would say it was further back.

DISTLER

1 Q Right. Okay. So this particular witness
2 didn't see how the incident started --

3 A Correct.

4 Q -- and made at least one error concerning
5 whether or not the female passenger in a car door
6 facing his house got out of the vehicle?

7 A Yes.

8 Q Just as a general proposition, if an
9 officer -- if a car was being driven at an officer
10 who was himself backed up to another car, he'd have
11 a right, or she would have a right to defend him or
12 herself in that situation, yes?

13 A Yes. We are trained to retreat in
14 situations like that.

15 Q Officers are trained to retreat when
16 people are trying to run them over?

17 A Yes. That's our training.

18 Q Okay. And if they can't retreat because
19 there is a car behind them or there's somebody in
20 the car that could be injured, if the other car
21 continues on, they're trained to just retreat and
22 let that accident happen?

23 A Yes.

24 Q So what Officer DiLeonardo should have
25 done, according to you, is he should have stepped

DISTLER

1 aside and let -- tried to run from the Prius that
2 was trying to run him down?

3 A It's my opinion that he had many other
4 options available to him, yes.

5 Q If somebody's trying to run down a police
6 officer or trying to ram a car with a passenger in
7 it, would that be a crime?

8 A Yes.

9 Q What would the crime be?

10 A Attempted assault.

11 Q Potentially attempted murder, depending on
12 the person's intent?

13 MS. HILLER: Objection. It calls for
14 speculation. There are more facts here.
15 This didn't happen in this case.

16 BY MR. BARKET

17 Q Well, it actually did. Everybody agrees.
18 Moroughan, DiLeonardo agree that they both said to
19 the police afterwards that he drove his vehicle
20 toward DiLeonardo.

21 A I disagree with that. I disagree with the
22 allegation -- the opinion that you're drawing from
23 that, that he --

24 Q It's not -- well, it's not an opinion.
25 DiLeonardo told you that the car was being driven at

DISTLER

1 him; correct?

2 A Yes.

3 Q And Moroughan told the police that
4 morning --

5 A He drove forward.

6 Q -- that he drove forward towards the
7 police officer?

8 A Yes.

9 Q So that would have been a crime of either
10 attempted assault or attempted murder?

11 MS. HILLER: Objection. Same
12 objection.

13 HEARING OFFICER STUDDERT: Yes, I'm
14 going to have to sustain that objection.

15 BY MR. BARKET

16 Q Police officers -- they're obligated to
17 make arrests and use deadly force in certain
18 circumstances; aren't they?

19 A Yes.

20 Q And if they --

21 MS. HILLER: Objection to the use of
22 the term "obligated." I don't know if
23 "obligated" is the right word to use, to
24 use deadly force.

25 HEARING OFFICER STUDDERT: Rephrase

DISTLER

1 —
2 MR. BARKET: She thinks it is. And
3 I'm comfortable with it, because I used
4 it. You may not like it, but that's what
5 redirect is for.
6 BY MR. BARKET:
7 Q As far as the attempted arrest goes, there
8 is no doubt, is there, that Officer DiLeonardo was
9 attempting to arrest Moroughan at the point in time
10 when he smashed the driver's side window?
11 A In my opinion, that is not true.
12 Q Well, he told you he you was trying to
13 arrest him, yes?
14 A That's what he stated.
15 Q And Moroughan told you that he was saying
16 he was a police officer and was trying to pull him
17 out of the car, right?
18 A Moroughan stated that he heard him state
19 that while he was at the side of the window.
20 Q And the girl in the car, what was her name
21 again?
22 A Kristie Mondo.
23 Q She said that DiLeonardo was saying, "You
24 going to go to jail. Get out" —
25 A Yes.

DISTLER

1 Q So he was trying to effectuate an arrest,
2 whether it be -- we can disagree about whether it
3 was a lawful or unlawful arrest. But that's what he
4 was trying to do at that point in time, yes?

5 A I think that statement came after he
6 shattered the window and punched him.

7 Q Doesn't it reveal what his intent was
8 there? You're not really suggesting that Officer
9 Moroughan (sic) was trying to -- his intent and his
10 subjective goal there was to simply beat up
11 Mr. Moroughan?

12 A I believe that was his intent at the time.

13 Q So despite him putting out his shield,
14 despite him saying, "Police officer," despite
15 Moroughan saying he identified himself as a police
16 officer, despite Kristie saying, "He told my
17 boyfriend he was going to jail that night," you
18 don't think he was trying to effectuate an arrest
19 there?

20 A I do not.

21 Q Your opinion of this is -- all of that,
22 all of that language, identifying himself as a
23 police officer, pulling out his shield, trying to
24 pull Moroughan out of the car, that was all a rouse,
25 and his real intent was to just beat up Moroughan?

DISTLER

1 A I think there is some inconsistencies as
2 to when some of those statements and events may have
3 occurred. When he identified himself, I believe my
4 investigation revealed that it's highly likely and
5 reasonable that he did not identify himself as a
6 police officer until after he was at the side of the
7 window, broke the window and shattered it and
8 punched him as Mr. Moroughan was attempting to
9 retreat and leave from the scene.

10 Q When did he take out his shield?

11 A To the best of my knowledge, his shield,
12 according to Officer Bienz, was not out. He never
13 saw it.

14 Q Didn't Officer DiLeonardo say he took out
15 his shield?

16 A Yes, he did.

17 Q Did he have his shield on him that night?

18 A Yes. According to the records, yes, he
19 did.

20 Q You say it's your opinion. I mean, you're
21 drawing an opinion separate from what the witnesses
22 told investigators at the scene.

23 A Not all of the witnesses.

24 Q You're picking and choosing the witnesses
25 you want to believe?

DISTLER

1 A I evaluated all of the testimony in this
2 case, all the evidence.

3 Q And you picked and chose the ones you
4 wanted to believe?

5 A No, that's not true.

6 Q Well, you discounted some and you believed
7 others, yes?

8 A Yes.

9 Q You indicated that he lost control of his
10 weapon?

11 A Yes.

12 Q Did anyone tell you that he lost control
13 of his weapon?

14 A Officer Bienz stated that Officer
15 DiLeonardo told him that he lost his weapon in the
16 vehicle.

17 Q Lost, or that Moroughan took it from him?

18 A No, Officer Bienz stated that when he was
19 in the hospital, Officer DiLeonardo came into his
20 room and stated that he lost his weapon in the cab.

21 Q Did he mean that — did you interpret that
22 to mean lost as in misplaced or lost as in, it's
23 gone?

24 A Lost, as in dropped. Lost control of it.

25 Q Didn't he tell the police officers who

DISTLER

1 arrived at the scene that the gun was taken from
2 him?

3 A Yes.

4 Q So right after the incident happened, he
5 told the police officers that the gun was taken from
6 him; yes?

7 A He told 911 that the gun was taken from
8 him in his 911 call.

9 Q That was seconds after the incident
10 happened; correct?

11 A Correct.

12 Q He told you that the gun was taken from
13 him, didn't he?

14 A Yes.

15 Q There are some things that we can agree
16 on, I think; right? Actually, a number of things.
17 That there is no doubt that certain events took
18 place. You talked about some of them yesterday.
19 That Moroughan was the initial aggressor in this
20 incident?

21 A Yes.

22 Q Pulling up his car, shouting, getting out
23 of his car, so forth; yes?

24 A Yes.

25 Q We can agree that he was unfamiliar with

DISTLER

1 how to operate the Prius; yes?

2 A Yes.

3 Q That after he got out of his car, he
4 returned to it; correct?

5 A Yes.

6 Q At that point in time, if he wanted to
7 leave, he could have simply driven straight and
8 continued on; yes?

9 A Yes.

10 Q So his backing up to get behind Officer
11 DiLeonardo's vehicle, that wasn't an act of somebody
12 leaving the scene, was it?

13 A Yes. In this instance, it was.

14 Q In this instance, backing up -- there were
15 no cars in front of him at that point, were there?

16 A No, but he had Officer DiLeonardo
17 approaching him on foot and he had Officer Bienz
18 exiting his vehicle.

19 Q So he backed up and then went forward?

20 A Correct. He backed up and then was
21 attempting to make a u-turn to exit the scene.

22 Q Going forward with the u-turn?

23 A Yes.

24 Q Why didn't he just make the u-turn?

25 A In reverse?

DISTLER

1 Q No, without going into reverse. Why
2 didn't he just pull away? Wasn't there an entire
3 side of the street that was empty? They're on the
4 right side of the street; yes?

5 A I couldn't state that there was no traffic
6 coming the other way.

7 Q How do you know this? How do you know
8 that that's what his intent was? He didn't speak to
9 you, did he? Did his girlfriend speak to you?

10 A No, she didn't.

11 Q Both of them refused to speak to you?

12 A Correct.

13 Q His statement to the police that night
14 didn't indicate that he was trying to make a u-turn,
15 did it?

16 A I'd have to review that statement.

17 Q Officer DiLeonardo certainly didn't
18 interpret Mr. Moroughan's conduct of backing up and
19 then coming forward towards him in his car as him
20 attempting to make a u-turn, did he?

21 A No, he didn't.

22 Q But without getting into Mr. Moroughan's
23 head, a person that you've never spoken to, and I
24 guess none of us have, we do know that he got back
25 into his car, backed up; yes?

DISTLER

1 A Yes.

2 Q And then began to move forward, correct?

3 A Yes. Correct.

4 Q At that point in time, Officer DiLeonardo
5 had his gun out; yes?

6 A According to Officer DiLeonardo's
7 statement, after the car went into reverse and
8 stopped, that was when he felt that there was a
9 threat and he removed his weapon.

10 Q Then the car began to move forward; yes?

11 A Yes.

12 Q And that's when Officer DiLeonardo fired
13 his weapon?

14 A Yes.

15 Q Officer DiLeonardo thereafter at some
16 point took his shield -- excuse me, identified
17 himself as a police officer?

18 A At some point.

19 Q Moroughan and his girlfriend, I guess, had
20 questions about whether or not what he was actually
21 a police officer?

22 A Yes.

23 Q There said they weren't sure.

24 A Correct.

25 Q Officer DiLeonardo told you -- we went

DISTLER

1 over this -- that he was trying to effectuate an
2 arrest at that point; yes?

3 A Yes.

4 Q And Moroughan and Christine -- Mondo, is
5 that her name?

6 A Kristie.

7 Q Kristie Mondo. Their statements, I guess,
8 are both in evidence, so what they say happened is
9 what they say happened.

10 How many times did you try to speak
11 to Christine -- or Kristie?

12 A Kristie, I believe once, and then I spoke
13 to the attorney also a second time, who also told me
14 he would not allow her to be interviewed.

15 Q Who is her attorney?

16 A Mr. Grandinette was who was representing
17 Mr. Moroughan.

18 Q How would Mr. Grandinette be able to
19 represent --

20 A He told me that she would not be giving me
21 a statement, and I asked Ms. Mondo for a statement.

22 Q Well, she's a witness to this.

23 A Correct.

24 Q So he can't represent a witness and a
25 party.

DISTLER

1 A No, but -- correct.

2 Q So did you try and go and speak to her
3 anyway?

4 A Yes.

5 Q And she refused?

6 A Yes.

7 Q You spoke to her personally and she said,
8 "I'm not talking to you"?

9 A I spoke to her mother or grandmother, I
10 believe, she lived with or maybe godmother, I'm not
11 sure who is was, at the residence.

12 Q When you spoke to Mr. Grandinette, you
13 told him you were with Internal Affairs; yes?

14 A Yes.

15 Q You told him you were investigating the --
16 your job is to investigate not Moroughan but
17 DiLeonardo and Bienz?

18 A Correct.

19 Q And I assume you conveyed that same
20 information to Kristie or her godmother or whoever?

21 A Correct.

22 Q And despite you telling them that you were
23 there to investigate the officers who they
24 complained about, right? They were complaining
25 about --

DISTLER

1 A Actually, the complaint did not come from
2 them.

3 Q Not to you. But they were certainly
4 complaining publicly and in court and through their
5 lawyers about the conduct of Bienz and DiLeonardo,
6 weren't they?

7 A I can only say that the public record was
8 made by the attorney. I don't believe I ever saw
9 Mr. Moroughan or Ms. Mondo make a statement.

10 Q Right. They refused to speak to you?

11 A Correct.

12 Q But you knew full well that they were
13 complaining publicly through their lawyers about the
14 conduct of the police here, don't you?

15 A Correct.

16 Q So despite you telling their lawyers that
17 you were there to investigate the complaints they
18 were making, they still refused to speak to you?

19 A Correct.

20 Q The statement or confession, whatever you
21 want to call it, of Moroughan that I guess is also
22 in evidence at this point in time, that had a lot of
23 information in it separate and apart from his trying
24 to run down or driving towards Officer DiLeonardo,
25 didn't it?

DISTLER

1 A Yes.

2 Q Did you go about corroborating the
3 information in that statement?

4 A Can you be more specific what you're
5 speaking about.

6 Q Sure. There is a number of factual
7 assertions in here. Did you investigate whether or
8 not those factual assertions were true?

9 A I would ask you to specifically tell me
10 which statements you're speaking about.

11 Q I'm asking, did you investigate any of it?

12 A Yes.

13 Q So, for example, we can go through this.
14 His date of birth was apparently written in wrong.
15 He corrected it from August to July?

16 A Correct.

17 Q Was he actually born in July or August, do
18 you know?

19 A I'm not sure on that.

20 Q Did you look at that at all?

21 A No.

22 Q He says that he was driving a white Prius.
23 That's true; correct?

24 A Correct.

25 Q He said he was working from 6:00 p.m. to

DISTLER

1 6:00 a.m., is that correct?

2 A I did not verify that.

3 Q Didn't you speak to the employer?

4 A Yes.

5 Q Okay. He had his girlfriend in the car
6 with him, Kristie? Yes?

7 A Correct.

8 Q He said he had been working for the
9 company for one week. Was that true?

10 A Yes.

11 Q So you verified that?

12 A Yes.

13 Q It says that his shift started with him
14 having a bad day. "There was a lot of traffic, and
15 I wasn't making any lights." Do you have any idea
16 if that's true?

17 A No.

18 Q Any idea or belief that was false?

19 A No.

20 Q "Sometime after 1:00 a.m., a blue Acura
21 passed me and I got annoyed and flashed my high
22 beams at him. I then -- I left them on
23 consciously." Did you investigate that?

24 A Independently just with the statements
25 that were presented to me of Ms. Mondo.

DISTLER

1 Q Was that true?

2 A Yes.

3 Q "I was mad at the way the guy was
4 driving." Is that correct?

5 A Yes. That was --

6 Q That's obvious, right, due to his conduct
7 afterwards?

8 A Yes.

9 Q "A white car then came up behind me and
10 flashed his brights at me." Was that correct?

11 A That was corroborated by Ms. Mondo.

12 Q Okay. Then it says, "At the time I was
13 driving southbound on New York Avenue," and that's
14 crossed off, and it says, "I was driving westbound
15 on West Hills Road in Huntington Station." Is that
16 accurate, the correction?

17 A He did not give me a statement, so I could
18 not state that was --

19 Q Given where the cars ended up and where
20 Mondo and I guess Officer DiLeonardo and Bienz told
21 you, is that consistent with the account that
22 everyone gave?

23 A Yes.

24 Q Okay. "The white car passed me, and I got
25 pissed off and followed the cars." Is that

DISTLER

1 accurate?

2 A I could not speak to Mr. Moroughan.

3 Q Well, didn't Mondo tell you that the white
4 car passed them and that --

5 A Yes.

6 Q -- Moroughan tried to stop him from
7 passing by accelerating?

8 A Yes.

9 Q And that he couldn't, and the car went
10 past him?

11 A Correct.

12 Q Okay. Then it says, "I drove west on West
13 19th Street, then north on Oakwood Road." That's
14 true, isn't it?

15 A Yes.

16 Q "I saw the two cars parked on the side of
17 Oakwood Road." That's obviously true; yes?

18 A Yes.

19 Q "I rolled down my passenger window and
20 pulled up next to the white Infiniti. I yelled to
21 guy who was in his mid-20s and white and" the quote
22 from yesterday. That's obviously accurate; right?

23 A Yes.

24 Q "He cursed back at me and began yelling
25 back and forth. I went to get out of my car, and so

DISTLER

1 did the guy in the white car, and so did the guy in
2 the blue car, who was stopped directly in front of
3 the white car." That's accurate, as far as it goes?

4 A As far as the guy in the blue car did not
5 get out at the same time, so I believe my
6 investigation revealed that happened at a later
7 time.

8 Q So Officer Bienz got out of his car a
9 little bit later?

10 A Yes.

11 Q But got out of his car?

12 A Yes.

13 Q Okay. "I then got back in my car, backed
14 it up. I continued yelling at the guy in the white
15 car. He yelled back. The guy in the white car
16 started walking toward my car and I revved my
17 engine." Is that accurate?

18 A I have a problem with the revving of the
19 engine.

20 Q Let's just talk about that for a second.

21 A Sure.

22 Q You're not saying that a Prius, whether
23 the electronic ignition or the electronic portion of
24 the car, if that's the right word, is silent, are
25 you?

DISTLER

1 A When the vehicle is stopped, it is silent.

2 Q Right. But when it's accelerating,
3 whether it's the gas combustion engine or electronic
4 portion of the engine, it still makes a noise, it's
5 just a slightly different noise?

6 A When the vehicle is accelerating, there is
7 a slight increase in noise, a slight.

8 Q It's kind of like a golf cart sound,
9 right? You drive golf carts?

10 A No, I don't.

11 Q You don't? Well, I've heard one or two in
12 my life, and they're not silent.

13 A Yes, I've heard them.

14 Q They're electric, right? They make a
15 noise?

16 A Slight increase, though, not a normal
17 motor on a regular car.

18 Q Right. It's a different noise.

19 A Correct.

20 Q But you can tell the car is accelerating?

21 A It makes a noise, yes.

22 Q Of course. Okay. "I drove toward the guy
23 who was standing in the street near his white car."

24 That's true, isn't it?

25 A Yes. He was in the travel lane.

DISTLER

1 Q "I then saw the guy" — what do you mean
2 he was in the travel lane?

3 A He was in the travel lane of Oakwood Road,
4 not in the parking lane where the vehicles were
5 parked.

6 Q How do you know that?

7 A Based on the evidence that was collected
8 by the —

9 Q How do you know where he backed up to? We
10 know where the glass was found, right, from the
11 broken glass?

12 A Right.

13 Q We don't know where he backed up to.

14 A Based on the Crime Scene Reconstruction
15 Shooting Report, he was backed up and moved forward
16 a light distance, which would make him in the same
17 lane that he was in.

18 Q That's not possible to know, is it? He
19 backed up, you said, 50 feet.

20 A I think it's reasonable based on what I
21 had available to me to believe that.

22 Q It's reasonable if you want to adopt your
23 conclusion, but we really don't have any evidence at
24 all as to where he backed up to, do we?

25 A I believe that the crime scene reports

DISTLER

1 indicates that he was backed up in that same travel
2 lane, yes.

3 Q Didn't you tell me he backed up 50 feet?

4 A Yes.

5 Q The crime scene is based upon where the
6 glass was found; yes?

7 A Correct.

8 Q They don't have any information, there's
9 no physical evidence about where the car backed up
10 to. All they can tell us is where the glass was
11 that was broken from the side view -- side window;
12 correct?

13 A Yes. And they also concluded how far
14 forward the car -- they estimated how far forward
15 the car drove.

16 Q And how did they do that exactly?

17 A Based on their evidence collected and I
18 guess the statements of the witnesses.

19 Q Ah, there we go. So it's again relying
20 on, I don't know, what Moroughan's lawyer said? I
21 mean, they didn't speak to anybody other than the
22 confession, and he doesn't say in here how far he
23 pulled forward.

24 A I believe there were other statements that
25 they evaluated and interviews that were done prior

DISTLER

1 to them reaching that conclusion.

2 Q Okay. So there is no forensic evidence,
3 it's witness statements of --

4 A It's a combination.

5 Q But the only forensic evidence that
6 exists -- tell me if I'm wrong -- is the broken
7 glass in the roadway; yes?

8 A And bloodstains.

9 Q Right. So that happened after the
10 shooting; yes?

11 A Yes.

12 Q And then when both Officer Bienz and
13 Officer DiLeonardo, I guess, got knocked down; yes?

14 A What is?

15 Q When the car door was opened and the
16 window was smashed, that's at the point of time when
17 Bienz and DiLeonardo were knocked down by the
18 operation of that vehicle?

19 A They were knocked down after.

20 Q Right. So it says, "I drove forward
21 toward the guy who was standing in the street near
22 his white car. I then saw the guy fire about three
23 or four shots at my car. I felt I was hit."

24 Even Moroughan say, "I felt he fired
25 at me to protect himself because I drove at him."

DISTLER

1 That's what he says?

2 A Correct.

3 Q And that's exactly what DiLeonardo says;
4 right? DiLeonardo says, I fired at him not because
5 I wanted to damage the car or assault him, but he
6 fired at him to protect himself and protect his
7 girlfriend?

8 A Correct.

9 Q And Moroughan says the same thing?

10 A Yes.

11 Q "The guy then came up behind my driver's
12 window and smashed his gun, busting my window and
13 hitting me in the face. The guy told me to get out,
14 and we were struggling. He said he was a police
15 officer." That all happened, didn't it?

16 A Yes.

17 Q "I was under" -- he says, "that I was
18 under arrest." Officer DiLeonardo says he said
19 that, right?

20 A Yes.

21 Q And so does Moroughan?

22 A Yes.

23 Q "I wasn't sure he was a cop, so I drove
24 backwards. My door was still opened, and as I went
25 backwards, I knocked the guy down. I know the gun

DISTLER

1 was a revolver when I went toward with my car" --

2 A "Forward."

3 Q Oh, forward. I'll take your word for it,
4 but it looks like a T in my copy.

5 -- "with my car. I meant to go
6 backwards, but I had trouble shifting at the end. I
7 drove to the hospital, and my girlfriend called 911
8 as I drove to the hospital." All of that happened;
9 yes?

10 A Yes.

11 Q Okay. So the statement that he gave,
12 whether you call it a confession or not, is largely
13 accurate and corroborated; yes?

14 A Depending upon which portions of it you
15 want to believe or not believe.

16 Q This is the complainant; yes?

17 A Yes.

18 Q This is the person who is quote/unquote
19 the victim of Officer DiLeonardo's misconduct.

20 A Again, I think --

21 Q I'm not asking anything other than --

22 A I think --

23 Q Am I wrong about that? Is Moroughan the
24 person that is supposedly the victim of Officer
25 DiLeonardo's misconduct?

DISTLER

1 A The victim --

2 MS. HILLER: Objection. When? At
3 what point in time are you saying that he
4 is the victim?

5 MR. BARKET: Well, I don't think he
6 was ever the victim, but that's your
7 point.

8 A The victim, not the complainant.

9 Q Okay.

10 This is the written statement that he
11 gave to the police shortly after the incident took
12 place; right?

13 A Yes. While he was in the hospital with
14 two gunshots in him.

15 Q Police aren't allowed to interview people
16 in those circumstances?

17 A No, I didn't say --

18 Q Are you saying that the detectives in
19 Suffolk did something wrong in taking his statement?

20 A I'm saying that --

21 Q Did you interview the detectives in
22 Suffolk?

23 A I did not.

24 Q Okay.

25 A They were interviewed by --

DISTLER

1 Q Somebody else?

2 A Yes.

3 Q And they told you they met with him, they
4 gave him his rights, he agreed to waive his rights,
5 he initialed the form and he spoke to them, and they
6 wrote down what he said; right?

7 A Correct.

8 Q What he said here, from anything that you
9 tried to corroborate was all accurate and the other
10 witnesses said it, from the initial aggressor to him
11 backing up, to him pulling forward to the time --
12 where they went, to him getting angry at the cars.
13 It's all true, isn't it?

14 A Those certain facts are true.

15 Q How do you pick and choose between the
16 facts in the same statement? They just don't
17 comport with your --

18 A By corroboration. By corroboration, by
19 evidence, by statements of other parties, by
20 reasonableness.

21 Q He was lying to the police when he said he
22 backed up and drove forward?

23 A It's possible, but I don't believe he was.
24 I believe that was factually true.

25 Q Right. He was backing up and he pulled

DISTLER

1 forward?

2 A Correct.

3 Q You could have investigated whether or not
4 his shift was that way; right?

5 A Correct, but that was not relevant to my
6 investigation.

7 Q Well, it would be relevant to somebody
8 saying that the confession was a fabrication by the
9 police, wouldn't it be? You've take confessions
10 yourself during your career, haven't you?

11 A Yes.

12 Q You know what defense attorneys do with
13 confessions, don't you?

14 A Yes. I just want --

15 Q You know that defense attorneys, after
16 somebody confesses, will allege that the confession
17 was either the product of coercion or was made up by
18 the police entirely; right?

19 A Yes.

20 Q And then what you do to rebut that is you
21 go about establishing that the information in the
22 statement is true, including the pedigree portion of
23 the statement; correct?

24 A Yes.

25 Q Okay. So there is nothing to stop you

DISTLER

1 from investigating this statement from start to
2 finish to see whether or not it was accurate; right?

3 A Correct.

4 Q Okay. I am done with my examination of
5 Detective Sergeant, and we are going to proceed --
6 I'm going to ask that we proceed the way we talked
7 about earlier.

8 MS. HILLER: I have redirect.

9 HEARING OFFICER STUDDERT: Okay. Why
10 don't we take a ten-minute break and then
11 come back, you can redirect.

12 (Whereupon, a brief recess was
13 taken.)

14 HEARING OFFICER STUDDERT: We are
15 back on the record. Sergeant Distler is
16 still under oath testifying, and
17 Ms. Hiller is going to redirect.

18 MS. HILLER: Thank you.

19 **REDIRECT EXAMINATION**

20 **BY MS. HILLER:**

21 Q Sergeant Distler, I might jump around a
22 little bit. I am just trying to hit some points
23 that counsel asked you on cross, so it might not be
24 in a particular order. But the first thing I just
25 wanted to ask you is you were asked a little about

DISTLER

1 the revving of the taxi cab on cross. And I want to
2 know if it is your opinion based on your interviews
3 and based on your investigation, do you believe that
4 any other people that were at that scene could hear
5 the actually noise the car was making when the car
6 accelerated forward?

7 MR. BARKET: Objection. That is just
8 utter speculation. It really is.

9 HEARING OFFICER STUDDERT: Can you
10 rephrase it?

11 MS. HILLER: I can't rephrase it.
12 I'll just ask a different question.

13 BY MS. HILLER

14 Q Based on the Suffolk County crime scene
15 report that's in evidence, what did you learn about
16 the level of noise of that car when it's moving
17 forward?

18 A There is a slight increase in the noise.

19 Q Okay. With respect to the — you were
20 asked a lot of questions about Mr. Moroughan's
21 statement that he gave on the morning of the
22 incident, after the incident that he gave to Suffolk
23 County. Do you know at that time Suffolk was
24 considering him a suspect or a victim?

25 A A suspect.

DISTLER

1 Q Why do you say that?

2 A Because he was arrested.

3 Q Do you know at the time that they were
4 interviewing him, at the time they were interviewing
5 Moroughan, did Suffolk believe DiLeonardo's version
6 of the story?

7 A Yes.

8 Q Did there come a time when that changed?

9 A Yes.

10 MR. BARKET: Objection.

11 HEARING OFFICER STUDDERT: On what
12 grounds?

13 MR. BARKET: We are now asking the
14 witness not only her opinion, which I find
15 objectionable, but we're going to ask her
16 opinion of a County? That's --

17 MS. HILLER: Okay. I can rephrase.

18 BY MS. HILLER

19 Q Did there come a time when you understood
20 that Suffolk County Police Department and the
21 Suffolk County District Attorney's Office changed
22 their opinion about whose versions of the statements
23 they believed?

24 MR. BARKET: It the same objection.

25 You can't, even in this kind of hearing,

DISTLER

1 ask a witness her opinion about an
2 entity's opinion, the office of the police
3 department.

4 MS. HILLER: I'm asking her based on
5 her knowledge of document that she
6 reviewed --

7 MR. BARKET: I'm not sure the office
8 has the ability to have an opinion. It's
9 just an office.

10 MS. HILLER: Okay. I'll rephrase.

11 BY MS. HILLER

12 Q Do you know what happened to the case with
13 respect to Mr. Moroughan.?

14 A Yes.

15 Q And what happened?

16 A Assistant District Attorney Pearl made a
17 motion on the record to dismiss all the charges
18 against Mr. Moroughan. He stated that there were
19 deficiencies in their ability to prove the case,
20 there were inconsistent facts, and there were
21 allegations that the officers may have been
22 intoxicated.

23 Q Based on what you just put on the record
24 with respect to what happened to that case, do you
25 feel that on the night that they took the statement

DISTLER

1 of Moroughan that the Suffolk County Police
2 Department again was believing DiLeonardo's version
3 of the story?

4 MR. BARKET: Objection.

5 HEARING OFFICER STUDDERT: On what
6 grounds?

7 MR. BARKET: It's completely
8 irrelevant in all respects what the
9 Suffolk County Police Department believed
10 or didn't believe when they're taking a
11 statement unless they're going to allege
12 that the police in Suffolk somehow were
13 motivated by that belief to lie about how
14 they took the statement and what's in the
15 statement.

16 MS. HILLER: I'm going to ask her
17 based on her expertise as an investigator
18 and somebody that actually interviews
19 suspects and victims that based on how
20 that statement is written, the format that
21 it's in, if Suffolk County believed he was
22 a suspect or a victim, and whose version
23 of the story they believed.

24 HEARING OFFICER STUDDERT: Your
25 objection is noted. I'll allow it. Go

DISTLER

1 ahead.

2 MR. BARKET: I thought we already
3 asked and answered. She already said he
4 was a suspect because he was under arrest
5 and his rights were read to him.

6 MS. HILLER: And why? Why did you
7 believe that? I'm asking her now.

8 MR. BARKET: Because he was under
9 arrest and his rights were read to him.

10 HEARING OFFICER STUDDERT: She's
11 asking the witness.

12 MS. HILLER: I'm asking her why.

13 MR. BARKET: But she already said it,
14 so the objection is asked and answered.

15 MS. HILLER: I'm asking her to
16 explain why.

17 BY MS. HILLER

18 Q What was your basis for that?

19 A Can you just repeat —

20 Q For your belief in why Suffolk County
21 Police Department may have believed DiLeonardo's
22 version of the story the night they took — or the
23 morning they took Moroughan's statement.

24 MR. BARKET: Objection. Why Suffolk,
25 an entity, had a belief? It's irrelevant.

DISTLER

1 It really is irrelevant.

2 HEARING OFFICER STUDDERT: Okay.

3 Move on and ask another question.

4 BY MS. HILLER

5 Q Do you think Anthony DiLeonardo was
6 telling the truth when he spoke to Suffolk County
7 the night of the incident?

8 MR. BARKET: Objection.

9 HEARING OFFICER STUDDERT: On what
10 grounds?

11 MR. BARKET: Her opinion of what —
12 Officer DiLeonardo's credibility when
13 speaking to somebody else is irrelevant.
14 She can talk about facts. He said X. If
15 there are facts that contradict X,
16 introduce them. If there is not, it's
17 just her view.

18 HEARING OFFICER STUDDERT: Rephrase
19 the question.

20 BY MS. HILLER

21 Q Are there facts in Moroughan's statement
22 that comport with DiLeonardo's version of the story,
23 that support DiLeonardo's version of the story?

24 A Yes.

25 Q At the time that they arrested -- I'm

DISTLER

1 sorry. At the time they interviewed Moroughan, did
2 Suffolk County Police Department have all the facts?

3 A No.

4 Q What didn't they have?

5 A They didn't have the Crime Scene
6 Reconstruction Shooting Report. They did not have
7 interviews of witnesses. They did not have
8 interviews of -- they hadn't done canvasses, I
9 believe.

10 Q Whose version of the story did they have
11 at the time they interviewed Mr. Moroughan?

12 A Police Officer DiLeonardo.

13 Q What time, if you know, do you know what
14 time that statement of Mr. Moroughan was taken and
15 on what date?

16 A On the morning of the incident,
17 February 27th, at 7:00 a.m.

18 Q So it was soon after the incident?

19 A Yes.

20 Q And do you know when he was arrested and
21 charged?

22 A He was arrested that morning.

23 Q Was he arrested without the benefit of
24 this other information?

25 A Yes.

DISTLER

1 Q Additionally, there was some testimony
2 earlier about the Deadly Force Response Team. At
3 the time that they gave they their preliminary
4 results, what information did they have?

5 MR. BARKET: I'm going to object. I
6 think that's beyond the scope of my cross.
7 I don't think I touched on that at all.

8 MS. HILLER: Did you not talk about
9 that? Okay, I'll withdraw.

10 BY MS. HILLER

11 Q Going back to Mr. Moroughan's statement,
12 and if you need to look at the statement, that's
13 fine, it's in evidence, did Dr. Moroughan ever say
14 that he was driving at Anthony DiLeonardo?

15 A No.

16 Q Did he ever say he was trying to run
17 Anthony DiLeonardo down?

18 A No.

19 Q Did he say he was moving forward?

20 A Yes.

21 Q With respect to him moving forward, what's
22 your understanding as to why he had to move forward?

23 A My understanding was that he was
24 attempting to make a u-turn to exit the area.

25 Q And with respect to the scene, you were

DISTLER

1 asked some questions about the scene. I just want
2 to clarify some distances. When you earlier -- you
3 were being asked questions about Eric Klug's
4 testimony. Approximately how far did you say Eric
5 Klug -- where he was watching this from to the
6 roadway was?

7 A From the inside of the house to the front
8 of the roadway?

9 Q Yes.

10 A I approximate that to be about 50 feet to
11 the roadway.

12 Q Is that an estimate?

13 A Yes.

14 Q With respect to the distance that you were
15 asked about how far Mr. Moroughan backed up his car,
16 is that different than the 50 feet you testified to?
17 Because I wasn't clear on that.

18 A Yes.

19 Q Is there something that you can refer to
20 that you can clarify that distance with?

21 A The Crime Scene Shooting Incident Report,
22 I believe.

23 Q It's in evidence. I think it might be 3
24 or 4 -- it's early on, I think. Maybe right after
25 the photos. So it's Department 6 (handing).

DISTLER

1 A In the Suffolk County Crime Scene
2 Reconstruction Incident Report, in the Results and
3 Conclusions section, sheet number 5, the conclusion
4 was that after Mr. Moroughan re-entered his taxi, he
5 backed up the vehicle a minimum distance of 30 to 45
6 feet.

7 Q With respect to that scene, you were asked
8 if it was dark out when this went on.

9 A Yes.

10 Q Was there anything else about the scene
11 that either helped or inhibited Mr. Klug's vision of
12 the scene, or view?

13 A There were street lights. Just
14 remembering the scene, there was a mailbox which was
15 on the street curb area, the post was intact, but
16 the mailbox was actually on the ground.

17 Q Was there a street light near Mr. Klug's
18 house?

19 A Yes.

20 Q Were there other -- you were asked about
21 Mr. Klug's statement, and in the statement, I
22 believe you said that -- or it was read to you, that
23 Mr. Klug saw the passenger of the taxi cab get out
24 of the car?

25 A Yes.

DISTLER

1 Q You testified that was inaccurate. True?

2 A Yes.

3 Q Were there other females at the scene
4 outside of their cars?

5 A Yes.

6 Q So is it possible he may have seen one of
7 those other females?

8 A It's possible.

9 Q You were asked some questions on cross
10 about the testimony that you took into consideration
11 when you were making your opinion of Thomas
12 Moroughan at two different at two different 50-R
13 hearings. Do you remember being asked questions
14 about that?

15 A Yes.

16 Q When you were reading that testimony as
17 part of your investigation, did you understand what
18 you were reading?

19 A Yes.

20 Q When you were reading that, did you have
21 an understanding that Tom Moroughan was a plaintiff?

22 A Yes.

23 Q Or a potential plaintiff?

24 A Yes. I knew he had filed a notice of
25 claim, or his attorney had.

DISTLER

1 Q Did you take that into consideration when
2 you were reading the document?

3 A Yes.

4 Q So you knew what type of document you were
5 reading?

6 A I knew I was reading a sworn deposition,
7 yes.

8 Q You were asked questions again on direct
9 about — you were asked questions about Moroughan's
10 statement, you were asked about Klug's statement.
11 There are multiple other statements on the record.
12 Do you believe 100 percent of any of those
13 statements that you reviewed?

14 A No. There were inconsistencies in every
15 statement.

16 Q Is that normal in the course of any
17 investigation?

18 A Yes.

19 Q With respect to all of the statements, did
20 you believe portions of them?

21 A Yes.

22 Q Did you discredit portions?

23 A Yes.

24 Q What did you do with the portions that you
25 believed?

DISTLER

1 A I corroborated the parts that I -- I
2 corroborated the parts that -- those were the parts
3 I believed to be accurate.

4 Q After doing that, did you determine what
5 you believed to be what was a reasonable version of
6 the facts?

7 A Yes.

8 Q Okay. And what was that?

9 MR. BARKET: Objection. That's your
10 job, Inspector, the conclusion.

11 MS. HILLER: I can rephrase.

12 HEARING OFFICER STUDDERT: I'll make
13 my own conclusion at the end.

14 MS. HILLER: I can rephrase.

15 BY MS. HILLER

16 Q What did your investigation conclude that
17 happened?

18 MR. BARKET: It wasn't the phrasing
19 that I objected to. It was the substance.

20 MS. HILLER: I thought it was --

21 MR. BARKET: We know what she thinks.
22 She said she is not going to change her
23 mind. We're not here to change her mind.
24 We're here to help the inspector make up
25 his.

DISTUR

1 HEARING OFFICER STUDDERT: I will
2 make an independent conclusion when it's
3 done. You can continue.

4 A My opinion of what the events -- how the
5 events unfolded that night was that there was a road
6 rage incident which started on New York Avenue
7 where, Mr. Moroughan, got his vehicle in between
8 Police Officer Bienz and Police Officer DiLeonardo.
9 Eventually they separated. Officer Bienz and
10 Officer DiLeonardo were lost. I believe Officer
11 Bienz pulled over to the side of the road, Officer
12 DiLeonardo pulled behind him. Mr. Moroughan pulled
13 up upon them, initiated a verbal shouting match.

14 He -- I believe Mr. Moroughan exited
15 his vehicle at least partially and continued the
16 verbal altercation over the hood of the taxi cab
17 which was adjacent to Officer DiLeonardo's vehicle.

18 Officer DiLeonardo made a choice, a
19 decision to exit his vehicle, which in my opinion
20 was a bad decision. It escalated the situation.

21 At this time, Officer Bienz --
22 Mrs. Bienz had exited her car and was going to go
23 back and talk to Officer DiLeonardo and explain to
24 him that they were lost and that they were going to
25 have to make a u-turn. As she was exiting her

DISTLER

1 vehicle, she saw the taxi cab pull up. She saw this
2 verbal argument occurring. She started
3 backpedaling.

4 Her husband, Eddie Bienz, who was
5 seated in his car with the windows up, was observing
6 her through the side-view and rearview mirrors, and
7 he then exited his vehicle because he saw her
8 backpedaling.

9 At this point, he went over to his
10 wife, he asked her what was going on. She said, "I
11 don't know. They're screaming."

12 Officer DiLeonardo is exiting his
13 vehicle at this point when Mr. Moroughan exits his
14 vehicle. Mr. Moroughan seen Officer Bienz exit his
15 vehicle, feels now that he is a little intimidated,
16 there is two of them and one of me. He gets in his
17 car, puts it in reverse in attempt to leave the
18 scene. He does not go forward, because he feels the
19 threat is approaching him.

20 He backs up 30 to 45 feet, as per the
21 Shooting Incident Reconstruction Report. At this
22 point, Officer DiLeonardo is walking toward the back
23 of his Infiniti. If there was a threat, I don't
24 understand why somebody would walk towards the
25 threat.

DISTLER

1 In his statement, he told me that he
2 was not sure if Mr. Moroughan may have had a weapon,
3 because he couldn't see his left hand. And he said
4 that he -- Mr. Moroughan was going to smash his car,
5 and "I don't fucking care. I'm going to kill you."
6 There is no logic to believe that you would walk
7 toward that threat. So his statement says he is
8 walking behind the car to get his girlfriend out.

9 I believe he had many other options.
10 I believe he could have stayed in his car. He could
11 have called 911. He could have retreated to safety
12 and drove away in his car.

13 As the car backs up, Mr. Moroughan,
14 in an attempt to make a u-turn, progresses forward.
15 I believe Officer DiLeonardo is approaching the
16 vehicle, walking at the taxicab, which is in the
17 middle travel lane of Oakwood Road, as per the
18 witness Eric Klug. And he's shooting at the vehicle
19 as he's approaching it.

20 The vehicle then comes to a stop
21 after, admittedly, Officer DiLeonardo fires all five
22 rounds from his gun and continues to dry-shoot his
23 weapon, even though there are no bullets left. The
24 vehicle comes to a stop in the middle of Oakwood
25 Road. Officer DiLeonardo then runs at the car,

DISTLER

1 which he just told me was going to run him and his
2 girlfriend over, with an empty gun, approaches the
3 driver's sides door, believing that Mr. Moroughan
4 may have a weapon, smashes the window open,
5 shattering the window, is able to unlock the door,
6 and he hits Mr. Moroughan with the butt of his gun
7 and then continues to punch him numerous times about
8 the head.

9 At this point, I believe he is
10 yelling to Mr. Moroughan that he's a cop, he's under
11 arrest, something to that effect. He then — Mr.
12 Moroughan, not believing that this person could be a
13 police officer, because he just shot him and tried
14 to beat him, puts his car in reverse with the car
15 door open, knocking Officer DiLeonardo over and
16 Officer Bienz, who was approaching the vehicle at
17 that point.

18 When the shooting stopped, Officer
19 Bienz then joined Officer DiLeonardo, or attempted
20 to join him. He never quite made it to the driver's
21 side.

22 Q During this whole incident, do you have
23 any belief or reason to believe that based on your
24 investigation, Anthony DiLeonardo was in fear for
25 his life?

DISTLER

1 A No.

2 Q Specifically, why?

3 A Because he had many other options. He
4 could have retreated, he could have called 911, he
5 could have drove away.

6 Q Did Tom Moroughan have a gun?

7 A No.

8 Q You were asked some questions with respect
9 to the off duty weapon that Anthony DiLeonardo had
10 that night, the .38 Smith & Wesson.

11 A Yes.

12 MS. HILLER: At this time, I'd like
13 to pass up copies of Departmental Rules
14 Article 8 to the hearing officer and ask
15 that it be marked into evidence.

16 HEARING OFFICER STUDDERT: Mark that
17 into evidence.

18 (Article 8, Departmental Rules was
19 marked as Plaintiff's Exhibit 23 for
20 evidence, as of this date.)

21 MS. HILLER: I would ask that be
22 passed to the witness.

23 BY MS. HILLER .

24 Q Do you recognize what you have before you,
25 Sergeant Distler?

DISTLER

1 A Yes.

2 Q What is that?

3 A It's a copy of the Department Rules, the
4 Article 8, Uniform and Equipment section.

5 Q Was Officer Anthony DiLeonardo ultimately
6 charged with violating one of these sections of
7 Article 8?

8 A Yes.

9 Q Do you know what section that was?

10 A Yes. Rule 12, Subdivision 1 -- 2.

11 Q Can you read that section into the record,
12 please.

13 A "Members are personally responsible for
14 the proper and authorized use, cleanliness,
15 serviceability and proper safeguarding of their
16 uniform and equipment and any other department
17 property issued for or assigned to their use."

18 Q With respect to the .38 Smith & Wesson,
19 was that issued or assigned to Officer DiLeonardo?

20 A Assigned.

21 Q Was that assigned to him pursuant to a
22 different section of this rule and reg?

23 A Yes.

24 Q Was it an on-duty or off-duty weapon?

25 A Off-duty.

DISTLER

1 Q I direct your attention to Section 3 of
2 the article -- I'm sorry, it's not 3. It is Rule
3 10(3).

4 A Yes.

5 Q Is this weapon one of the authorized, for
6 lack of a better word, off-duty weapons?

7 A Yes.

8 Q Do you know if he was trained on that
9 weapon?

10 A Yes.

11 Q Do you know anything about the training he
12 had on that weapon?

13 A Yes. I know he you was trained -- he
14 attended training two times in 2009 and twice in
15 2010 and he qualified in that off-duty weapon.

16 His final training was in December of
17 2010, and he received a score of 73 in qualifying
18 with that weapon.

19 Q Okay. So with respect to that weapon, you
20 testified that the weapon was assigned versus issued
21 to POD Anthony DiLeonardo; correct?

22 A Correct.

23 Q Can you just explain what that means for
24 the clarity of the record with respect to the
25 assignment issued?

DISTLER

1 A The Department authorizes members to carry
2 off-duty weapons and in this section it explains
3 which weapons are acceptable and which ones are
4 authorized for us to carry. The only qualification
5 — the only condition is that you attend a one day
6 familiarization qualification course with that
7 weapon at the firearms training unit.

8 Q Does the Police Department of Nassau
9 County keep a list of weapons that members have been
10 assigned to by virtue of this off duty section of
11 Article 8?

12 A Yes.

13 Q Was this weapon assigned to him as off
14 duty as far as Nassau County Police Department was
15 considered?

16 A Yes.

17 MR. BARKET: Is that right?

18 MR. SANTIAGO: Correct.

19 MR. BARKET: Who assigned this?

20 MR. SANTIAGO: Assigned means it was
21 designated as a weapon --

22 MS. HILLER: It is like on a list.
23 It is a word we use.

24 MR. BARKET: Aren't you confusing --
25 I mean she is not a lawyer. Aren't you

DISTLER

1 confusing authorized with assigned?

2 MR. SANTIAGO: No, I am not.

3 Authorized and assigned means that -- each
4 are pre-cursors. One they train and then
5 you are supposed to requalify.

6 MR. BARKET: What does assign mean?

7 MR. SANTIAGO: Assigned means
8 assigned for use for off duty carriers.
9 It's recognized for that purpose as
10 opposed to a list of weapons. You wanted

11 --
12 MR. BARKET: It says, "Issued or
13 assigned."

14 MR. SANTIAGO: Yes.

15 MR. BARKET: So what else would be
16 assigned?

17 MS. HILLER: There could be a list of
18 assigned weapons.

19 MR. BARKET: Not weapons. Assigned
20 would be --

21 MR. SANTIAGO: Off duty or on duty,
22 because there are many on duty and few off
23 duty. I don't know any off duty weapons
24 that would be assigned to you.

25 MR. BARKET: Let me talk about this

DISTLER

1 afterwards because it can be confusing.

2 Authorized and assigned because --

3 MR. SANTIAGO: Well, these are not
4 within the realm of legal definitions. We
5 are talking about within the organization
6 as an agency.

7 MR. BARKET: Your just making this up
8 after we heard this yesterday. Assigned
9 equals organized.

10 MS. HILLER: That's not accurate.

11 MR. BARKET: Is there some prior
12 decision to indicate this?

13 MR. SANTIAGO: There are no prior
14 decisions on this issue of definitions of
15 assigned.

16 MR. BARKET: Okay.

17 BY MS. HILLER:

18 Q Sergeant Distler, is it your understanding
19 that this .38 caliber Smith & Wesson was assigned to
20 P.O. Dileonardo for off duty use.

21 A Yes.

22 Q Was it also an authorized weapon pursuant
23 to the rules and regs --

24 A Yes.

25 Q -- for off-duty use?

DISTLER

1 A Yes.

2 Q Where are the records kept with respect to
3 assigned weapons?

4 A In the pistol license section.

5 Q If I wanted to see a list of assigned
6 weapons for any officer, would I be able to find it
7 there?

8 A Yes.

9 Q Off-duty use weapons, I should say.

10 A Yes. If they qualified under the rules
11 and regs, yes.

12 Q Do you feel that Anthony DiLeonardo had a
13 reason to you tell that he was making an authorized
14 arrest?

15 MR. BARKET: Objection to "feel."

16 HEARING OFFICER STUDDERT: Can you
17 rephrase the question.

18 Q It is your opinion?

19 MR. BARKET: Objection.

20 HEARING OFFICER STUDDERT: Rephrase.

21 Q Why would Anthony DiLeonardo --

22 MR. BARKET: Objection. Because he
23 actually was. I mean this is just
24 absolutely irrelevant.

25 Q What contradicted the statement that he

DISTLER

1 made to you that he was making an authorized arrest?

2 MS. HILLER: Can she answer the
3 question?

4 HEARING OFFICER STUDDERT: Yes.

5 A The facts -- the fact that he was the
6 aggressor in the incident. That he approached the
7 cab. That he had other options to retreat and he
8 chose not to do them.

9 Q Do you know why he told you that he was in
10 fear for his safety?

11 MR. BARKET: Objection.

12 Q Based on your investigation do you know
13 why he said that?

14 MR. BARKET: Objection.

15 HEARING OFFICER STUDDERT: Overruled.

16 MR. BARKET: Are we going to allow
17 the witness to speculate as to Anthony's
18 motivation?

19 HEARING OFFICER STUDDERT: Your
20 objection is noted. I will give it the
21 weight its due.

22 BY MS. HILLER:

23 Q You can base it on your expertise as well.

24 A Yes. I believe --

25 MR. BARKET: What expertise could the

DISTLER

1 witness possibly have of Police Officer
2 DiLeonardo's operation of his mind?

3 MS. HILLER: I would ask her to base
4 it on her expertise with respect to
5 somebody who is a detective sergeant in
6 the Internal Affairs Investigation Unit
7 that has interviewed --

8 MR. BARKET: For three months or six
9 months? Come on.

10 MS. HILLER: She is also a detective
11 sergeant.

12 MR. BARKET: Why he said something?
13 Unless he said it -- unless he himself
14 said it, it's just utter guess work.

15 BY MS. HILLER:

16 Q Do you have a theory as to why he told you
17 that?

18 MR. BARKET: Objection.

19 HEARING OFFICER STUDDERT: The record
20 reflects your objection. You may answer
21 the question.

22 A Yes. I believe he knew the facts that
23 needed to be presented to establish what he claimed
24 was going be a lawful arrest and I believe he
25 presented those facts that way.

DISTLER

1 MS. HILLER: I don't have any other
2 further questions.

3 HEARING OFFICER STUDDERT: Do you
4 want to re-cross?

5 MR. BARKET: Thank you.

6 **RE-CROSS EXAMINATION**

7 **BY MR. BARKET:**

8 Q Did you and anyone from the Legal Bureau
9 have any discussion about Article 8 between
10 yesterday and your testimony just now?

11 A Yes.

12 Q Who did you discuss this with?

13 A With Lesli Hiller.

14 Q When was the first time anyone ever asked
15 you about the definition of assigned and or
16 authorized?

17 A I'm not sure that I was ever asked the
18 definition of assigned and or authorized.

19 Q Do you have any experience or any training
20 in defining these terms in Rule 12 of Article 8?

21 A Any?

22 Q Sure. There is a phrase here that you are
23 pointing to that you say he violated?

24 A Yes.

25 Q We talked about this yesterday a little

DISTLER

1 bit. Let me rephrase the question: Section 2 of
2 Rule 12, "Members are personally responsible for the
3 proper and authorized use, cleanliness,
4 serviceability, and proper safeguarding of their
5 uniform and equipment and any other department
6 property issued for or assigned to their use."

7 Is this .38 caliber weapon the
8 property of the police department?

9 A No, it is not.

10 Q Are there things that are assigned to an
11 officer?

12 A Yes.

13 Q Cars?

14 A Well --

15 Q You would be assigned to a patrol car?

16 A For a particular period of time.

17 Q Of course. Well that's the point. It's
18 any other department property issued for or assigned
19 to their use and presumably used as a police
20 officer; right?

21 A Yes. But if you look at Subdivision D,
22 "The commanding officers have the authority when
23 approved by their --"

24 Q No. I am not reading from Subdivision D
25 in the other Article. I am reading from the rule

DISTLER

1 that you charged him with violating. Rule 12,
2 Section 2.

3 A Correct.

4 Q This here says that you have to keep
5 clean, serviceable, and safeguard and it lists off
6 things: Uniforms, equipment, and any other
7 department property; right?

8 A Yes.

9 Q This was neither equipment nor a uniform
10 nor other department property, was it?

11 A It was equipment.

12 Q Equipment issued by the Department?

13 A It says, "Equipment and other Department
14 property."

15 Q And any other — any other.

16 A Correct.

17 Q The first part of it has to be Department
18 property too.

19 The officers are assigned police
20 cars. They are assigned all kinds — they are
21 assigned shotguns, handcuffs, mace, gun belts, dogs
22 — potentially if you want to look at it that way.
23 These are the things this rule is talking about;
24 isn't it?

25 MS. HILLER: Objection.

~~DISP~~

1 HEARING OFFICER STUDDERT: Overruled.
2 You can answer the question.
3 Q That's what this rule is referring to.
4 A I believe it includes his off duty weapon.
5 Q I know what your belief is. I know what
6 the ascertain is. What I am saying to you is can
7 you think of another instance where somebody owns
8 private property -- this weapon belongs to Anthony
9 DiLeonardo; right? He bought it and paid for it;
10 yes?
11 A Yes.
12 Q He has a right to carry it if he gets a
13 permit as a civilian; yes?
14 A Yes.
15 Q Is there another instance where the
16 Department would claim ownership of or in somehow
17 force someone to maintain a personal item? Baseball
18 bat, golf clubs --
19 A It was assigned to him.
20 Q It wasn't assigned to him. He bought it.
21 He was authorized to carry it. The Department
22 didn't tell him to carry it; did they?
23 A No, but --
24 Q It didn't require him to carry it.
25 A -- when he qualifies in it he is

DISTIER

1 requesting the ability to carry it. By attending
2 this course and receiving approval — by qualifying
3 for it, that gives him the authorization to carry
4 that.

5 Q You are confusing authorization with
6 assigned.

7 MS. HILLER: Objection. She just
8 testified what her belief is in
9 understanding the rules and regs.

10 Q He needs to be authorized to do it. There
11 is lots of things that an officer needs to be
12 authorized to do, but he is not assigned to do;
13 right?

14 A Yes.

15 Q So he is not required to carry this
16 weapon, is he?

17 A No.

18 Q It wasn't part of his job, was it?

19 A No.

20 Q He was authorized to; yes? If he
21 qualified.

22 A Yes.

23 Q He went through the steps that the
24 Department said that you have to qualify to be
25 authorized to do; correct?

DISTLER

1 A Correct.

2 Q Does an officer have the same obligations
3 when confronted with a violent situation as a
4 civilian?

5 MS. HILLER: Objection.

6 MR. BARKET: Do you understand my
7 question?

8 MS. HILLER: I am objecting to the
9 question.

10 HEARING OFFICER STUDDERT: On what
11 grounds?

12 MS. HILLER: He is comparing her
13 understanding as to the understanding of a
14 civilian. Is that it?

15 Q Well, you repeatedly said on re-direct
16 that Anthony had other options: He could have
17 retreated, he could have driven away, he could have
18 done this, he could have done that. Are police
19 officers supposed to retreat from potentially
20 violent conduct? Is that their job?

21 A In certain situations, yes.

22 Q If you have an instance where somebody is
23 posing a threat, who is behaved irrationally, who
24 screamed things, who confronted you, the officer is
25 supposed to retreat? He was supposed to run into

DISTLER

1 Mr. Klug's house and call 911?

2 A No.

3 Q That's how you want police officers to
4 behave?

5 A I don't believe there was a threat.

6 Q You don't believe there was a threat but
7 at the time that Officer DiLeonardo was out on that
8 street, he was confronted by somebody who was
9 behaving irrationally; right?

10 A Short of his abusive language, Mr.
11 Moroughan posed no threat to Officer DiLeonardo.

12 Q How was Officer DiLeonardo supposed to
13 know that at the time? Wasn't Officer DiLeonardo's
14 car blocked in? You said he could have driven away.
15 Where was he going to drive to?

16 A He could have --

17 Q He could have backed up --

18 A Absolutely.

19 Q -- and left Ms. Bienz out on the street
20 for this person who pulled up next to his car,
21 blocked his car in --

22 A He had other options --

23 Q -- blocked his car in and was screaming at
24 him and was getting out of his car. So at that
25 point in time the officer -- he is not a civilian,

DISTLER

1 but a police officer; yes? He is a police officer?

2 MS. HILLER: What is the question?

3 MR. BARKET: He is a police officer;
4 isn't he?

5 A Is he a police officer? Yes.

6 Q And are police officers trained that when
7 they are off duty their status as police officers
8 don't count?

9 A No.

10 MS. HILLER: Objection. This is
11 outside the scope.

12 HEARING OFFICER STUDDERT: Move on to
13 the next question.

14 Q Isn't he a police officer 24/7?

15 A Yes.

16 Q So if he sees a crime going on or somebody
17 who is posing a danger to the community, he is not
18 free to simply say, "It's my day off. I'm going to
19 ignore it."

20 MS. HILLER: I am making my same
21 objection. It is outside the scope of
22 both direct, re-direct, and cross.

23 MR. BARKET: It goes exactly to the
24 heart of what they are trying to
25 establish. They are trying to establish

DISTLER

1 that he could have backed away or ran in
2 or —

3 HEARING OFFICER STUDDERT: Counselor,
4 go to the next question. The record is
5 noted.

6 BY MR. BARKET:

7 Q At the point in time that you are saying
8 that Officer DiLeonardo made a quote bad decision to
9 get out of the car, his car was blocked in the front
10 by Officer Bienz's car; correct?

11 A Yes.

12 Q It was blocked on the side by Moroughan's
13 car; correct?

14 A Yes.

15 Q Moroughan pulled up on a travel portion of
16 the road. Stopped his car and began yelling and
17 cursing at Officer DiLeonardo; yes?

18 A Yes.

19 Q Moroughan then got out of his car; yes?

20 A Yes.

21 Q And continued to curse and scream at
22 Officer DiLeonardo; yes?

23 A Yes.

24 Q The only place that Officer DiLeonardo
25 could have gone with his car is to back up far

DISTLER

1 enough to somehow drive away from this individual in
2 the middle of the street screaming and yelling;
3 right?

4 A That would have been the most likely --

5 Q Most likely -- that was the only thing he
6 could have done.

7 A Yes.

8 Q He would have left Officer Bienz where he
9 was; right?

10 A Yes...

11 Q Was his wife -- Officer Bienz's wife out
12 of the car at this point?

13 A Yes.

14 Q And would have left somebody -- one of his
15 companions out on the street to deal with this
16 person who stopped on the travel portion of the
17 road. Who is cursing at them and screaming at them,
18 and you think it was reasonable for Officer
19 DiLeonardo at that point to just drive away?

20 A I think it would have been more reasonable
21 for him to not engage in the verbal altercation and
22 roll up his window and call 911.

23 Q Roll up his window --

24 A Yes.

25 Q -- and leave the individual to confront

DISTLER

1 Ms. Bienz?

2 A There was no --

3 MS. HILLER: Objection.

4 HEARING OFFICER STUDDERT: On what
5 grounds?

6 MS. HILLER: That is not in the
7 record anyway.

8 HEARING OFFICER STUDDERT: Do you
9 have another question, counselor?

10 BY MR. BARKET:

11 Q What made you think that Moroughan or what
12 would have made Officer DiLeonardo think Moroughan
13 wouldn't have dealt with Ms. Bienz once Officer
14 DiLeonardo pulled away?

15 MS. HILLER: Objection. Same
16 objection. Calls for speculation. You
17 attacked us for trying to --

18 HEARING OFFICER STUDDERT: Do you
19 have any other questions for this witness?

20 BY MR. BARKET:

21 Q You mentioned something about Police
22 Officer DiLeonardo or Bienz were intoxicated. Did
23 Chief Hunter and other chiefs from the Department
24 interview Bienz and DiLeonardo that night?

25 MS. HILLER: Objection. Outside the

DISTRICT

1 scope, completely. Outside the scope of
2 my re-direct.

3 MR. BARKET: It goes right to the
4 heart of the intoxication.

5 HEARING OFFICER STUDDERT: Sustained.
6 Keep the testimony related --

7 MR. BARKET: It is. She said there
8 were allegations he was intoxicated. They
9 know there was several chiefs who
10 interviewed him who said he wasn't.

11 MS. HILLER: That has nothing to do
12 with whether or not he had been drinking
13 that night or not.

14 HEARING OFFICER STUDDERT: He is not
15 being charged with that.

16 MR. BARKET: It is not a question of
17 drinking. The word, "intoxication" was
18 used.

19 MS. HILLER: Whether or not he was
20 intoxicated has nothing to do with Chief
21 Hunter. This is the first time his name
22 is coming out today. Other than his
23 report being read into the record.

24 MR. BARKET: Chief Hunter and other
25 personnel from the Nassau County Police

DISTLER

1 Department interviewed Officer DiLeonardo
2 and said that he was not intoxicated.

3 MS. HILLER: Objection. It's
4 completely outside the scope of my
5 redirect.

6 HEARING OFFICER STUDDERT: Sustained.
7 Just move on to the next question.

8 MR. BARKET: I am sorry. I thought
9 that Detective Sergeant indicated that
10 there are allegations that Officer
11 DiLeonardo was intoxicated on re-direct.
12 If I am wrong about that then I apologize,
13 but I thought I heard that.

14 MS. HILLER: I don't recall. I could
15 be wrong but whether or not she said he
16 was intoxicated has nothing to do with
17 Chief Hunter, so I am objecting to that
18 portion of your question.

19 HEARING OFFICER STUDDERT: The record
20 is noted. It's on the record.

21 MR. BARKET: But if Chief Hunter
22 interviewed Officer DiLeonardo and
23 concluded that he was not intoxicated
24 interviewed him that night. That --

25 MS. HILLER: There is no testimony

DISTLER

1 into that. Especially in my re-direct,
2 which is what you are now addressing.

3 MR. BARKET: Okay. Well, if I am
4 wrong about her saying that he was
5 intoxicated, then I am wrong about that
6 and i apologize.

7 BY MR. BARKET:

8 Q Who told you that Moroughan was try trying
9 make a u-turn?

10 A It is in the Crime Scene Reconstructive
11 Incident Report.

12 Q Who told them? Where did that come from?

13 A That came from their investigation.

14 Q Did Moroughan say that?

15 A Not in his statement, no.

16 Q Did his girlfriend say that?

17 A Not in her statement.

18 MR. BARKET: Nothing else.

19 MS. HILLER: I have nothing further.

20 HEARING OFFICER STUDDERT: We will
21 conclude for today. We will meet back
22 here on Monday. Is that what we decided?

23 MR. BARKET: Yes.

24 HEARING OFFICER STUDDERT: Is 10:00
25 good?

DISTLER

1 MR. BARKET: 10:00 is good.

2 HEARING OFFICER STUDDERT: Are you
3 calling witnesses or no, just submissions?

4 MR. BARKET: I suspect I will. I
5 won't make that decision yet, but I
6 suspect that if I call witnesses that will
7 only be one or two -- brief.

8 (Continued on the following page
9 to accommodate the jurat.)
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DISTLER

1 HEARING OFFICER STUDDERT: Okay.

2 MR. BARKET: My suspicion is I will
3 simply proceed without witnesses.

4 HEARING OFFICER STUDDERT: Okay.
5 Thank you.

6
7 - ooo -

8 (Whereupon, the examination of JO-ANN
9 DISTLER was concluded at 11:15 a.m.)

10
11 _____
12 JO-ANN DISTLER

13
14 Subscribed and sworn to before me
15 this ____ day of _____, 20__.

16
17 _____
18 NOTARY PUBLIC
19
20
21
22
23
24
25

DISTLER

INDEX

EXAMINATION OF DETECTIVE SERGEANT JO-ANN DISTLER:

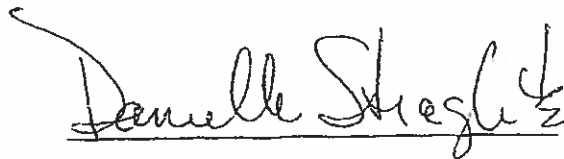
CROSS-EXAMINATION BY MR. BARKET	181-214
REDIRECT EXAMINATION BY MS. HILLER	214-241
RE-CROSS EXAMINATION BY MR. BARKET	241-254

DEPARTMENT EXHIBITS

19A	209 Reflecting Assault	178
23	Article 8 Departmental Rules	232

CERTIFICATE BY COURT REPORTER

I, Danielle Stieglitz, a Certified, Professional Court Reporter and Notary Public in and for the State of New York do hereby certify that the foregoing testimony taken in the matter of NASSAU COUNTY POLICE DEPARTMENT against ANTHONY DILEONARDO, consisting of page 175 through 258 is an accurate transcription of my cryptic notes.
IN WITNESS WHEREOF, I SET MY HAND THIS DAY.



Danielle Stieglitz

CERTIFIED COURT REPORTER

NORTH SHORE COURT REPORTERS

NOTARY PUBLIC - STATE OF NEW YORK

	A	253/12 253/17 254/3 254/5
x [2] 175/1 175/6	a.m. [5] 175/11 201/1 201/20 221/17 256/9	angry [1] 212/12
	ability [3] 217/8 217/19 245/1	Ann [4] 181/8 256/8 256/12 257/3
38 [4] 232/10 233/18 237/19 242/7	able [3] 197/18 231/5 238/6	annoyed [1] 201/21
1	about [53] 179/11 180/22 182/6 182/20 182/24 190/2 193/18 196/20 198/24 198/25 199/5 199/13 200/2 200/5 200/10 204/20 207/9 208/22 210/23 213/21 214/7 214/25 215/15 215/20 216/22 217/1 218/13 220/14 222/2 222/8 223/1 223/3 223/10 223/15 224/10 224/20 225/10 225/14 226/9 226/9 226/10 231/7 234/11 236/25 237/5 241/9 241/15 241/25 243/23 251/21 253/12 254/4 254/5	another [6] 185/24 186/10 220/3 244/7 244/15 251/9
10 [1] 234/3	absolutely [2] 238/24 247/18	answer [3] 239/2 240/20 244/2
100 [1] 226/12	abusive [1] 247/10	answered [3] 180/14 219/3 219/14
10:00 [2] 254/24 255/1	accelerated [1] 215/6	ANTHONY [13] 175/5 220/5 222/14 222/17 231/24 232/9 233/5 234/21 238/12 238/21 244/8 246/16 258/6
11 [1] 175/10	accelerating [4] 203/7 205/2 205/6 205/20	Anthony's [1] 239/17
11:50 [2] 175/9 176/8	acceptable [1] 235/3	any [26] 180/4 180/14 200/11 201/15 201/15 201/18 206/23 207/8 215/4 226/12 226/16 231/23 233/16 236/23 238/6 241/1 241/9 241/19 241/19 241/21 242/5 242/18 243/6 243/15 243/15 251/19
11:50 [1] 176/16	accident [1] 186/22	anybody [1] 207/21
11:15 [1] 256/9	accommodate [1] 255/9	anyone [3] 192/12 241/8 241/14
12 [4] 233/10 241/20 242/2 243/1	accounting [4] 186/25 191/12 191/18 196/6	anything [6] 178/17 182/23 210/21 212/8 224/10 234/11
1490 [2] 175/8 176/7	account [1] 202/21	anyway [2] 198/3 251/7
175 [1] 258/6	accurate [11] 202/16 203/1 203/22 204/3 204/17 210/13 212/9 214/2 227/3 237/10 258/7	apart [1] 199/23
178 [1] 257/11	accustomed [1] 183/24	apologies [2] 253/12 254/6
181-214 [1] 257/4	act [2] 194/11	apparently [1] 200/14
19 [1] 178/5	actually [12] 183/11 184/8 184/23 187/17 193/16 196/20 199/1 200/17 215/5 218/18 224/16 238/23	approached [1] 239/6
19A [2] 178/14 257/11	Actra [1] 201/20	approaches [1] 231/2
19th [1] 203/13	Ad [1] 180/24	approaching [5] 194/17 229/19 230/15 230/19 231/16
1:00 [1] 201/20	addition [1] 184/17	approval [1] 245/2
2	additional [1] 185/24	approved [1] 242/23
20 [1] 256/15	Additionally [1] 222/1	approximate [1] 223/10
2009 [1] 234/14	addressing [1] 254/2	Approximately [1] 223/4
2010 [2] 234/15 234/17	adjacent [1] 228/17	are [53] 177/24 179/22 180/3 181/20 182/7 182/11 183/5 186/13 186/15 186/16 187/14 193/15 197/8 204/24 211/3 211/18 212/14 214/5 214/14 216/13 220/15 220/21 226/11 230/23 233/13 235/3 235/3 236/4 236/5 236/22 237/3 237/5 237/13 238/2 239/16 241/22 242/2 242/10 242/10 243/19 243/20 243/20 243/23 245/5 246/18 248/6 248/7 248/24 248/25 249/7 253/10 254/2 255/2
2014 [1] 175/10	admit [1] 179/5	area [2] 222/24 224/15
209 [4] 178/6 178/9 178/13 257/11	admittedly [1] 230/21	aren't [4] 188/18 211/15 235/24 235/25
20s [1] 203/21	advice [3] 178/23 179/11 180/8	argument [1] 229/2
210 [1] 178/10	Affairs [2] 198/13 240/6	around [1] 214/21
214 [1] 257/4	after [19] 182/1 190/5 191/6 193/4 193/9 194/3 196/7 201/20 208/9 208/19 211/11 213/15 215/22 221/18 223/24 224/4 227/4 230/21 237/8	arrest [14] 189/7 189/9 189/13 190/1 190/3 190/18 191/2 200/18 219/4 219/9 231/11 238/14 239/1 240/24
214-241 [1] 257/5	afterwards [3] 187/19 202/7 237/1	arrested [5] 216/2 220/25 221/20 221/22 221/23
23 [2] 232/19 257/12	again [5] 189/21 207/19 210/20 218/2 226/8	arrests [1] 188/17
232 [1] 257/12	against [3] 175/4 217/18 258/5	arrived [1] 193/1
247 [1] 248/14	agency [1] 237/6	article [10] 232/14 232/18 233/4 233/7 234/2 235/11 241/9 241/20 242/25 257/12
241 [1] 257/5	aggressor [3] 193/19 212/10 239/6	Article 8 [2] 232/14 241/20
241-254 [1] 257/6	agree [4] 183/3 187/18 193/15 193/25	as [50] 177/10 178/13 178/14 179/15 180/2 185/9 186/8 189/7 189/7 190/15 190/22 191/1 191/5 191/8 192/22 192/22 192/24 195/19 196/17 204/3 204/3 204/4 204/4 206/24 209/24 210/8 218/17 221/22 225/16 228/25 229/20 230/13 230/17 230/19 232/19 232/20 235/13 235/14 235/14 235/21 236/9 237/6 239/17 239/23 240/16 242/19 244/13 246/3 246/13 248/7
254 [1] 257/6	agreed [1] 212/4	ascertain [1] 244/6
258 [1] 258/6	agrees [1] 187/17	aside [1] 187/1
270s [1] 221/17	Ah [1] 207/19	ask [14] 171/23 171/25 183/6 200/9 214/6 214/25 215/12 216/5 217/1 218/16 220/3 232/14 232/21 240/3
3	ahead [1] 219/1	asked [20] 197/21 214/23 214/25 215/20 219/3 219/14 223/1 223/3 223/15 224/7 224/20 225/9 225/13 226/8 226/9 226/10
30 [2] 224/5 229/20	all [22] 180/10 182/10 190/21 190/22 190/24 191/23 192/1 192/2 200/20 206/24 207/10 209/15 210/8 212/9 212/13 217/17 218/8 221/2 222/7 226/19 230/21 243/20	
4	allegation [1] 187/22	
422 [1] 183/15	allegations [3] 217/21 252/8 253/10	
45 [2] 224/5 229/20	allege [2] 213/16 218/11	
5	allow [3] 197/14 218/25 239/16	
50 [3] 185/24 206/19 223/10	allowed [1] 211/15	
50 feet [4] 185/4 185/15 207/3 223/16	already [4] 178/12 219/2 219/3 219/13	
50-B [1] 225/12	also [8] 176/19 177/11 197/13 197/13 199/21 207/13 237/22 240/10	
6	altercation [2] 228/16 250/21	
666 [1] 176/14	am [15] 183/18 210/23 214/4 214/22 236/2 242/24 242/25 244/6 246/8 248/20 253/8	
6:00 a.m. [1] 201/1		
6:00 p.m. [1] 200/25		
7		
700 [1] 176/15		
73 [1] 234/17		
7:00 a.m. [1] 221/17		
8		
8118 [2] 175/3 176/10		
9		
9013 [1] 175/5		
911 [7] 193/7 193/8 210/7 230/11 232/4 247/1 250/22		
9:40 [1] 175/11		

<p>A</p> <p>asked... [4] 229/10 232/8 241/14 241/17</p> <p>asking [8] 200/11 210/21 216/13 217/4 219/7</p> <p>219/11 219/12 219/15</p> <p>assault [6] 178/10 178/13 187/10 188/10</p> <p>289/5 257/11</p> <p>assertions [2] 200/7 200/8</p> <p>assign [1] 236/6</p> <p>assigned [37] 233/17 233/19 233/20 233/21</p> <p>234/20 235/10 235/13 235/19 235/20 236/1</p> <p>236/3 236/7 236/8 236/13 236/16 236/18</p> <p>236/19 236/24 237/2 237/8 237/15 237/19</p> <p>238/3 238/5 241/15 241/18 242/6 242/10</p> <p>242/15 242/18 243/19 243/20 243/21 244/19</p> <p>244/20 245/6 245/12</p> <p>assignment [1] 234/25</p> <p>Assistant [1] 217/16</p> <p>assume [1] 198/19</p> <p>attacked [1] 251/17</p> <p>attempt [2] 229/17 230/14</p> <p>attempted [6] 187/10 187/11 188/10 188/10</p> <p>189/7 231/19</p> <p>attempting [5] 189/9 191/8 194/21 195/20</p> <p>222/24</p> <p>attend [1] 235/5</p> <p>attended [1] 234/14</p> <p>attending [1] 245/1</p> <p>attention [1] 234/1</p> <p>attorney [5] 197/13 197/15 199/8 217/16</p> <p>225/25</p> <p>Attorney's [3] 179/17 179/20 216/21</p> <p>attorneys [5] 176/6 176/13 178/24 213/12</p> <p>213/15</p> <p>August [2] 200/15 200/17</p> <p>authority [1] 242/22</p> <p>authorization [2] 245/3 245/5</p> <p>authorized [17] 233/14 234/5 235/4 236/1</p> <p>236/3 237/2 237/22 238/13 239/1 241/16</p> <p>241/18 242/3 244/21 245/10 245/12 245/20</p> <p>245/25</p> <p>authorities [1] 235/1</p> <p>available [2] 187/4 206/21</p> <p>AVENUE [4] 175/8 176/7 202/13 228/6</p> <p>away [10] 185/15 195/2 230/12 232/5 246/17</p> <p>247/14 249/1 250/1 250/19 251/14</p>	<p>213/7 213/9 214/23 223/10 223/23 227/3</p> <p>227/5 231/12 232/15 232/21 236/15 236/17</p> <p>236/20 236/24 237/1 238/6 240/23 240/24</p> <p>242/15 243/17 245/10 246/11 245/24 253/15</p> <p>255/7</p> <p>beams [1] 201/22</p> <p>beat [3] 190/10 190/25 231/14</p> <p>because [20] 178/22 183/3 183/23 186/18</p> <p>189/3 208/25 209/4 216/2 219/4 219/8</p> <p>223/17 229/7 229/18 230/3 231/13 232/3</p> <p>236/22 237/1 237/2 238/22</p> <p>been [8] 185/13 188/9 201/8 217/21 235/9</p> <p>250/4 250/20 252/12</p> <p>before [7] 175/16 178/2 178/7 181/20 182/18</p> <p>232/24 256/14</p> <p>begin [4] 196/2 196/10 203/24 249/16</p> <p>begin [1] 184/8</p> <p>behalf [1] 179/7</p> <p>behave [1] 247/4</p> <p>behaved [1] 246/23</p> <p>behaving [1] 247/9</p> <p>behind [6] 186/19 194/10 202/9 209/11</p> <p>228/12 230/8</p> <p>being [10] 179/17 179/19 184/18 185/15</p> <p>186/9 187/25 223/3 225/13 252/15 252/23</p> <p>belief [7] 201/18 218/13 219/20 219/25</p> <p>231/23 244/5 245/8</p> <p>believe [38] 190/12 191/3 191/25 192/4</p> <p>197/12 198/10 199/8 204/5 206/21 206/25</p> <p>207/24 210/15 210/15 212/23 212/24 215/3</p> <p>216/5 218/10 219/7 221/9 223/22 224/22</p> <p>226/12 226/20 228/10 228/14 230/6 230/9</p> <p>230/10 230/15 231/9 231/23 239/24 240/22</p> <p>240/24 244/4 247/5 247/6</p> <p>believed [9] 192/6 216/23 218/9 218/21</p> <p>218/23 219/21 226/25 227/3 227/5</p> <p>believing [3] 218/2 231/3 231/12</p> <p>belongs [1] 244/8</p> <p>belts [1] 243/21</p> <p>benefit [1] 221/23</p> <p>best [1] 191/11</p> <p>better [1] 234/6</p> <p>between [4] 185/2 212/15 228/7 241/9</p> <p>beyond [1] 222/6</p> <p>Bien's [5] 191/12 192/14 192/18 194/17</p> <p>198/17 199/5 202/20 204/8 208/12 208/17</p> <p>228/8 228/9 228/11 228/21 228/22 229/4</p> <p>229/14 231/16 231/19 247/19 250/8 251/1</p> <p>251/13 251/22 251/24</p> <p>Bien's [2] 249/10 250/11</p> <p>births [1] 200/14</p> <p>bit [3] 204/9 214/22 242/1</p> <p>blocked [5] 247/14 247/21 247/23 249/9</p> <p>249/12</p> <p>bloodstains [1] 208/8</p> <p>blue [3] 201/20 204/2 204/4</p> <p>born [1] 200/17</p> <p>both [6] 180/4 187/18 195/11 197/8 208/12</p> <p>248/22</p> <p>bought [2] 244/9 244/20</p> <p>boyfriend [1] 190/17</p> <p>break [1] 214/10</p> <p>brief [2] 214/12 255/7</p> <p>brights [1] 202/10</p> <p>broke [1] 191/7</p> <p>broken [3] 206/11 207/11 208/6</p> <p>BRUCE [3] 176/17 177/6 180/16</p> <p>bullets [1] 230/23</p> <p>bureau [12] 176/21 176/22 176/24 177/13</p> <p>177/16 177/19 177/22 178/21 178/25 179/6</p> <p>179/23 241/8</p> <p>busting [1] 209/12</p> <p>but [1] 231/6</p>	<p>C</p> <p>cab [6] 192/20 215/1 224/23 228/16 229/1</p> <p>239/7</p> <p>caliber [2] 237/19 242/7</p> <p>call [7] 181/4 193/8 199/21 210/12 247/1</p> <p>250/22 255/6</p> <p>called [3] 210/7 230/11 232/4</p> <p>calling [1] 255/3</p> <p>calls [2] 187/13 251/16</p> <p>came [5] 190/5 192/19 202/9 209/11 254/13</p> <p>can [31] 171/2 177/11 177/23 181/9 182/23</p> <p>190/2 193/15 193/25 199/7 200/4 200/13</p> <p>205/20 207/10 214/11 215/9 216/17 219/19</p> <p>220/14 223/19 223/20 227/11 227/14 228/3</p> <p>233/11 234/23 237/1 238/16 239/2 239/23</p> <p>244/2 244/6</p> <p>can't [4] 186/18 197/24 215/11 216/25</p> <p>canvases [1] 221/8</p> <p>car [81] 184/18 184/19 185/20 185/23 186/5</p> <p>186/9 186/10 186/19 186/20 186/20 187/6</p> <p>187/25 189/17 189/20 190/24 193/22 193/23</p> <p>194/3 195/19 195/25 196/7 196/10 201/5</p> <p>202/9 202/24 203/4 203/9 203/25 204/1</p> <p>204/2 204/3 204/4 204/8 204/11 204/13</p> <p>204/15 204/15 204/16 204/24 205/17 205/20</p> <p>205/23 207/9 207/14 207/15 208/15 208/22</p> <p>208/23 209/5 210/1 210/5 215/5 215/5</p> <p>215/16 223/15 224/24 228/22 229/5 229/17</p> <p>230/4 230/8 230/10 230/12 230/13 230/25</p> <p>231/14 231/14 242/15 247/14 247/20 247/21</p> <p>247/23 247/24 249/9 249/9 249/10 249/13</p> <p>249/16 249/19 249/25 250/12</p> <p>care [1] 230/5</p> <p>carver [1] 213/10</p> <p>carriers [1] 236/8</p> <p>carry [9] 235/1 235/4 244/12 244/21 244/22</p> <p>244/24 245/1 245/3 245/15</p> <p>cars [8] 194/15 202/19 202/25 203/16 212/12</p> <p>225/4 242/13 243/20</p> <p>cart [1] 205/8</p> <p>cars [1] 205/9</p> <p>case [9] 175/3 179/7 181/10 184/2 187/15</p> <p>192/2 217/12 217/19 217/24</p> <p>certain [4] 188/17 193/17 212/14 246/21</p> <p>certainly [2] 195/17 199/3</p> <p>CERTIFICATE [1] 258/1</p> <p>Certified [2] 258/2 258/14</p> <p>certify [1] 258/4</p> <p>change [3] 182/23 227/22 227/23</p> <p>changed [2] 216/8 216/21</p> <p>charged [4] 221/21 233/6 243/1 252/15</p> <p>charges [2] 178/7 217/17</p> <p>chat [1] 180/21</p> <p>Chief [5] 251/23 252/20 252/24 253/17</p> <p>253/21</p> <p>chiefs [2] 251/23 252/9</p> <p>choice [1] 228/18</p> <p>choose [1] 212/15</p> <p>choosing [1] 191/24</p> <p>chose [2] 192/3 239/8</p> <p>Christine [2] 197/4 197/11</p> <p>circumstances [2] 188/18 211/16</p> <p>CITY [1] 176/16</p> <p>civilian [4] 244/13 246/4 246/14 247/25</p> <p>civilians [1] 183/19</p> <p>claims [2] 225/25 244/16</p> <p>CLAIMANT [1] 176/6</p> <p>claimed [1] 240/23</p> <p>clarity [3] 180/6 223/2 223/20</p> <p>clarity [1] 234/24</p> <p>clean [1] 243/5</p> <p>cleanliness [2] 233/14 242/3</p>
<p>B</p> <p>back [13] 185/25 195/24 203/24 203/25</p> <p>204/13 204/15 214/11 214/15 222/11 228/23</p> <p>229/22 249/25 254/21</p> <p>backed [19] 185/24 186/10 194/19 194/20</p> <p>195/25 204/13 206/9 206/13 206/15 206/19</p> <p>206/24 207/1 207/13 207/19 212/22 223/15</p> <p>224/5 247/17 249/1</p> <p>backing [5] 194/10 194/14 195/18 212/11</p> <p>212/25</p> <p>backpedaling [2] 229/3 229/8</p> <p>backs [2] 229/20 230/13</p> <p>backwards [3] 209/24 209/25 210/6</p> <p>bad [3] 201/14 228/20 249/8</p> <p>BARKET [6] 176/12 176/17 177/6 241/7</p> <p>257/4 257/6</p> <p>Barkett's [1] 181/6</p> <p>base [2] 239/23 240/3</p> <p>Baschall [1] 244/17</p> <p>based [14] 206/7 206/14 206/20 207/5</p> <p>207/17 215/2 215/3 215/14 217/4 217/23</p> <p>218/17 218/19 231/23 239/12</p> <p>basis [1] 219/18</p> <p>bat [1] 244/18</p> <p>be [36] 178/9 179/10 179/18 186/20 187/7</p> <p>187/9 190/2 197/14 197/18 197/20 200/4</p>		

<p>C</p> <p>clear [1] 223/17</p> <p>clubs [1] 244/18</p> <p>coercion [1] 213/17</p> <p>collected [2] 206/7 207/17</p> <p>combination [1] 208/4</p> <p>combination [1] 205/3</p> <p>come [6] 199/1 214/11 216/8 216/19 240/9 254/12</p> <p>comes [2] 230/20 230/24</p> <p>comfortable [1] 189/3</p> <p>coming [3] 195/6 195/19 252/22</p> <p>COMISKEY [2] 176/21 177/18</p> <p>commencing [3] 176/20 177/21 242/22</p> <p>Commissioner [1] 179/8</p> <p>community [1] 248/17</p> <p>companions [1] 250/15</p> <p>company [1] 201/9</p> <p>comparing [1] 246/12</p> <p>complained [2] 210/16 211/8</p> <p>complained [1] 198/24</p> <p>complaining [3] 198/24 199/4 199/13</p> <p>complaint [1] 199/1</p> <p>complaints [1] 199/17</p> <p>completed [1] 182/2</p> <p>completely [3] 218/7 252/1 253/4</p> <p>comport [2] 212/17 220/22</p> <p>concern [1] 179/22</p> <p>concerning [1] 186/4</p> <p>concerns [1] 180/4</p> <p>conclude [2] 227/16 254/21</p> <p>concluded [3] 207/13 253/23 256/9</p> <p>conclusion [7] 184/22 206/23 208/1 224/3 227/10 227/13 228/2</p> <p>Conclusions [1] 224/3</p> <p>condition [1] 235/5</p> <p>conduct [5] 195/18 199/5 199/14 202/6 246/20</p> <p>confesses [1] 213/16</p> <p>confession [5] 199/20 207/22 210/12 213/8 213/16</p> <p>confessions [2] 213/9 213/13</p> <p>confront [1] 250/25</p> <p>confronted [3] 246/3 246/24 247/8</p> <p>confusing [4] 235/24 236/1 237/1 245/5</p> <p>consciously [1] 201/23</p> <p>consideration [2] 225/10 226/1</p> <p>considered [1] 235/15</p> <p>considering [1] 215/24</p> <p>consistent [1] 202/21</p> <p>consisting [1] 258/6</p> <p>combined [1] 182/11</p> <p>CONTINUATION [1] 175/14</p> <p>continue [2] 177/24 228/3</p> <p>continued [5] 194/8 204/14 228/15 249/21 255/8</p> <p>continues [3] 186/21 230/22 231/7</p> <p>contradict [1] 220/15</p> <p>contradicted [1] 238/25</p> <p>control [3] 192/9 192/12 192/24</p> <p>carried [1] 198/19</p> <p>cop [2] 209/23 231/10</p> <p>copies [1] 232/13</p> <p>copy [4] 178/11 178/12 210/4 233/3</p> <p>correct [53] 178/3 178/6 183/17 183/18 184/13 184/16 184/24 184/25 185/6 186/3 188/1 193/10 193/11 194/4 194/20 195/12 196/2 196/3 196/24 197/23 198/1 198/18 198/21 199/11 199/15 199/19 200/16 200/23 200/24 201/1 201/7 202/4 202/10 203/11 205/19 207/7 207/12 209/2 209/8 212/7 213/2 213/5 213/23 214/3 234/21 234/22</p>	<p>235/18 243/3 243/16 245/25 246/1 249/10 249/13</p> <p>corrected [1] 200/15</p> <p>correction [1] 202/16</p> <p>corroborate [1] 212/9</p> <p>corroborated [4] 202/11 210/13 227/11 227/12</p> <p>corroborating [1] 200/2</p> <p>corroboration [2] 212/18 212/18</p> <p>could [26] 186/20 194/7 202/17 203/2 213/3 215/4 230/10 230/10 230/11 231/12 232/4 232/4 232/5 236/17 239/25 246/16 246/17 246/17 246/18 247/14 247/16 247/17 249/1 249/25 250/6 253/14</p> <p>couldn't [3] 195/5 203/9 230/3</p> <p>counsel [4] 177/13 178/12 178/19 214/23</p> <p>connector [2] 249/3 251/9</p> <p>count [2] 178/10 248/8</p> <p>Count III [1] 178/10</p> <p>COUNTRY [1] 176/14</p> <p>COUNTY [23] 175/2 175/7 176/5 177/5 177/13 177/15 182/16 215/14 215/23 216/16 216/20 216/21 218/1 218/9 218/21 219/20 220/6 221/2 224/1 235/9 235/14 252/25 258/5</p> <p>course [6] 178/22 205/22 226/16 235/6 242/17 245/2</p> <p>court [6] 178/8 199/4 258/1 258/3 258/14 258/15</p> <p>credibility [1] 220/12</p> <p>crime [12] 187/7 187/9 188/9 206/14 206/25 207/5 215/14 221/5 223/21 224/1 248/16 254/10</p> <p>cross [11] 181/7 181/15 214/23 215/1 222/6 225/9 241/4 241/6 248/22 257/4 257/6</p> <p>CROSS-EXAMINATION [2] 181/15 257/4</p> <p>crossed [1] 202/14</p> <p>cryptic [1] 258/7</p> <p>cub [1] 224/15</p> <p>curse [1] 249/21</p> <p>curse [1] 203/24</p> <p>curse [1] 236/4</p> <p>curse [2] 249/17 250/17</p> <p>D</p> <p>daily [1] 179/10</p> <p>damage [1] 209/5</p> <p>danger [1] 248/17</p> <p>Danielle [2] 258/2 258/13</p> <p>dark [3] 185/7 185/8 224/8</p> <p>date [4] 178/15 200/14 221/15 232/20</p> <p>day [5] 201/14 235/5 248/18 256/15 258/8</p> <p>deadly [3] 188/17 188/24 222/2</p> <p>deal [1] 250/15</p> <p>dealt [1] 251/13</p> <p>December [1] 234/16</p> <p>decided [1] 254/22</p> <p>decision [5] 228/19 228/20 237/12 249/8 255/5</p> <p>decisions [1] 237/14</p> <p>defend [1] 186/11</p> <p>defense [2] 213/12 213/15</p> <p>deficiencies [1] 217/19</p> <p>defining [1] 241/20</p> <p>definitely [1] 180/23</p> <p>definition [2] 241/15 241/18</p> <p>definitions [2] 237/4 237/14</p> <p>DELORENZO [2] 176/24 177/14</p> <p>department [33] 175/2 175/7 176/5 177/5 177/13 177/15 216/20 217/3 218/2 218/9 219/21 221/2 223/25 233/3 233/16 235/1 235/8 235/14 242/5 242/8 242/18 243/7 243/10 243/12 243/13 243/17 244/16 244/21 245/24 251/23 253/1 257/9 258/5</p>	<p>Department's [1] 178/14</p> <p>Departmental [3] 232/13 232/18 257/12</p> <p>depending [2] 187/11 210/14</p> <p>deposition [1] 226/6</p> <p>designated [2] 180/1 235/21</p> <p>despite [7] 185/15 190/13 190/14 190/14 190/16 198/22 199/16</p> <p>defective [8] 176/21 177/19 177/20 214/5 240/5 240/10 253/9 257/3</p> <p>detectives [2] 211/18 211/21</p> <p>determine [1] 227/14</p> <p>did [64] 182/14 183/14 184/9 187/17 191/5 191/10 191/16 191/17 191/19 192/12 192/21 192/21 195/9 195/9 195/15 195/20 197/10 198/2 199/1 200/2 200/7 200/11 200/20 201/2 201/23 202/17 204/1 204/1 204/4 207/16 211/19 211/21 211/23 215/15 216/5 216/8 216/19 219/6 221/1 221/6 221/7 221/10 222/4 222/8 222/13 222/16 222/19 223/4 225/17 225/20 226/1 226/19 226/22 226/24 227/4 227/16 232/6 241/8 241/12 244/22 251/22 254/12 254/14 254/16</p> <p>didn't [27] 184/8 184/15 185/21 186/2 187/15 191/14 192/25 193/13 194/24 195/2 195/8 195/10 195/14 195/17 195/21 199/25 201/3 203/3 207/13 207/21 209/15 211/17 218/10 221/4 221/5 244/22 244/24</p> <p>different [7] 205/5 205/18 215/12 223/16 225/12 225/12 233/22</p> <p>DILEONARDO [69] 175/5 177/7 177/9 185/23 186/24 187/18 187/20 187/25 189/8 189/23 191/14 192/15 192/19 194/16 195/17 196/4 196/12 196/15 196/25 198/17 199/5 199/24 202/20 208/13 208/17 208/13 209/4 209/18 220/5 221/12 222/14 222/17 228/8 228/10 228/12 228/18 228/23 229/12 229/22 230/15 230/21 230/25 231/15 231/19 231/24 232/9 233/5 233/19 234/21 237/20 238/12 238/21 244/9 247/7 247/11 247/12 249/8 249/17 249/22 249/24 250/19 251/12 251/14 251/22 251/24 253/1 253/11 253/22 258/6</p> <p>Dileonardo's [13] 194/11 196/6 210/19 210/25 216/5 218/2 219/21 220/12 220/22 220/23 228/17 240/2 247/13</p> <p>direct [8] 226/8 234/1 246/15 248/22 248/22 252/2 253/11 254/1</p> <p>directly [1] 204/2</p> <p>disagree [4] 183/3 187/21 187/24 190/2</p> <p>discipline [1] 179/25</p> <p>disconcerting [1] 179/18</p> <p>discounted [1] 192/6</p> <p>discredit [1] 226/22</p> <p>discuss [1] 241/12</p> <p>discussion [1] 241/9</p> <p>dismiss [1] 217/17</p> <p>distance [5] 185/2 206/16 223/14 223/20 224/5</p> <p>distances [1] 223/2</p> <p>Distler [8] 181/8 214/15 214/21 232/25 237/18 256/9 256/12 257/3</p> <p>District [4] 179/17 179/19 216/21 217/16</p> <p>do [54] 180/10 181/24 183/2 183/14 190/4 190/20 195/7 195/7 195/24 200/17 201/15 206/1 206/6 206/9 206/24 207/16 212/15 213/12 213/20 215/3 215/23 216/1 216/3 217/12 217/14 220/5 221/13 221/20 225/13 226/12 226/24 231/22 231/24 233/9 234/8 234/11 238/12 239/8 239/9 239/12 240/16 241/3 241/19 245/10 245/12 245/25 246/6 251/8 251/18 252/11 252/20 253/16 258/4</p> <p>document [3] 217/5 226/2 226/4</p> <p>does [7] 178/20 179/25 209/21 220/18 235/8</p>
--	--	--

<p>D</p> <p>does [2] 236/6 246/2</p> <p>doesn't [2] 190/7 207/22</p> <p>dogs [1] 243/21</p> <p>doing [1] 227/4</p> <p>don't [25] 188/22 190/18 199/8 199/14 205/10 205/11 206/13 206/23 207/8 207/20 211/5 212/16 212/23 213/13 214/10 222/7 229/11 229/23 230/5 236/23 241/1 247/5 247/6 248/8 253/14</p> <p>done [9] 181/1 186/25 207/25 214/4 221/8 228/3 246/18 246/18 250/6</p> <p>door [7] 185/12 186/5 208/15 209/24 231/3 231/5 231/15</p> <p>doubt [2] 189/8 193/17</p> <p>down [10] 187/2 187/5 199/24 203/19 208/13 208/17 208/19 209/25 212/6 222/17</p> <p>Dr [1] 222/13</p> <p>drawing [2] 187/22 191/21</p> <p>drew [1] 182/1</p> <p>drinking [2] 252/12 252/17</p> <p>drive [4] 205/9 247/15 250/1 250/19</p> <p>driven [5] 186/9 187/25 194/7 246/17 247/14</p> <p>driver's [4] 189/10 209/11 231/3 231/20</p> <p>driving [7] 185/23 199/24 200/22 202/4 202/13 202/14 222/14</p> <p>dropped [1] 192/24</p> <p>drove [14] 187/19 188/5 188/6 203/12 205/22 207/15 208/20 208/25 209/23 210/7 210/8 212/22 230/12 232/5</p> <p>dry [1] 230/22</p> <p>dry shoot [1] 230/22</p> <p>due [3] 180/3 202/6 239/21</p> <p>during [3] 178/22 213/10 231/22</p> <p>duty [20] 232/9 233/24 233/24 233/25 234/6 234/15 235/2 235/10 235/14 236/8 236/21 236/21 236/22 236/23 236/23 237/20 237/25 238/9 244/4 248/7</p>	<p>ESQ [3] 176/9 176/17 176/22</p> <p>establish [3] 240/23 248/25 248/25</p> <p>establishing [1] 213/21</p> <p>estimate [1] 223/12</p> <p>estimated [1] 207/14</p> <p>evaluated [2] 192/1 207/25</p> <p>even [3] 206/24 216/25 230/23</p> <p>events [4] 191/2 193/17 228/4 228/5</p> <p>Eventually [1] 228/9</p> <p>ever [6] 199/8 211/6 222/13 227/16 241/14 241/17</p> <p>every [1] 226/14</p> <p>Everybody [1] 187/17</p> <p>everyone [1] 202/22</p> <p>evidence [19] 178/5 178/14 182/8 192/2 197/8 199/22 206/7 206/23 207/9 207/17 208/2 208/5 212/19 215/15 222/13 223/23 232/15 232/17 232/20</p> <p>exactly [3] 207/16 209/3 248/23</p> <p>examination [9] 181/15 214/4 214/19 241/6 256/8 257/3 257/4 257/5 257/6</p> <p>example [1] 200/13</p> <p>excess [1] 196/16</p> <p>Exhibit [3] 178/5 178/14 232/19</p> <p>exhibits [2] 181/10 257/9</p> <p>exists [1] 208/6</p> <p>exit [4] 194/21 222/24 228/19 229/14</p> <p>exited [3] 228/14 228/22 229/7</p> <p>existing [3] 194/18 228/25 229/12</p> <p>exits [1] 229/13</p> <p>experience [1] 241/19</p> <p>expertise [4] 218/17 239/23 239/25 240/4</p> <p>explain [3] 219/16 228/23 234/23</p> <p>explains [1] 215/2</p>	<p>followed [1] 202/25</p> <p>following [1] 255/8</p> <p>foot [1] 194/17</p> <p>force [4] 188/17 188/24 222/2 244/17</p> <p>foregoing [1] 258/4</p> <p>forensic [2] 208/2 208/5</p> <p>forum [1] 212/5</p> <p>format [1] 218/20</p> <p>formed [1] 182/20</p> <p>forth [2] 193/23 203/25</p> <p>forward [24] 188/5 188/6 194/19 194/22 195/19 196/2 196/10 206/15 207/14 207/14 207/23 208/20 210/2 210/3 212/11 212/22 213/1 215/6 215/17 222/19 222/21 222/22 229/18 230/14</p> <p>found [2] 206/10 207/6</p> <p>four [1] 208/23</p> <p>FRANKLIN [2] 175/8 176/7</p> <p>free [1] 248/18</p> <p>front [5] 185/5 194/15 204/2 223/7 249/9</p> <p>fucking [1] 230/5</p> <p>full [1] 199/12</p> <p>further [3] 185/25 241/2 254/19</p>
<p>E</p> <p>each [1] 236/3</p> <p>earlier [4] 178/4 214/7 222/2 223/2</p> <p>early [1] 223/24</p> <p>Eddie [1] 229/4</p> <p>effect [1] 231/11</p> <p>effective [3] 190/1 190/18 197/1</p> <p>either [3] 188/9 213/17 224/11</p> <p>electric [1] 205/14</p> <p>electronic [3] 204/23 204/23 205/3</p> <p>else [6] 178/17 212/1 220/13 224/10 236/15 254/18</p> <p>employer [1] 201/3</p> <p>empty [2] 195/3 231/2</p> <p>end [2] 210/6 227/13</p> <p>ended [1] 202/19</p> <p>engage [1] 250/21</p> <p>engine [4] 204/17 204/19 205/3 205/4</p> <p>enough [1] 250/1</p> <p>entered [1] 224/4</p> <p>entire [1] 195/2</p> <p>entirely [1] 213/18</p> <p>entity [1] 219/25</p> <p>entity's [1] 217/2</p> <p>episode [1] 183/20</p> <p>EPSTEIN [1] 176/12</p> <p>epoch [1] 237/9</p> <p>equipment [8] 233/4 233/16 242/5 243/6 243/9 243/11 243/12 243/13</p> <p>Eric [4] 184/5 223/3 223/4 230/18</p> <p>error [2] 178/3 186/4</p> <p>escalated [1] 228/20</p> <p>Especially [1] 254/1</p>	<p>F</p> <p>fabrication [1] 213/8</p> <p>face [1] 209/13</p> <p>facing [2] 185/13 186/6</p> <p>fact [2] 185/20 239/5</p> <p>facts [12] 187/14 212/14 212/16 217/20 220/14 220/15 220/21 221/2 227/6 239/5 240/22 240/25</p> <p>factual [2] 200/6 200/8</p> <p>factually [1] 212/24</p> <p>false [1] 201/18</p> <p>familiarization [1] 235/6</p> <p>far [10] 189/7 204/3 204/4 207/13 207/14 207/22 223/4 223/15 235/14 249/25</p> <p>few [2] 231/24 239/10</p> <p>February [1] 221/17</p> <p>February 27th [1] 221/17</p> <p>feet [3] 217/25 238/12 238/15</p> <p>feels [2] 229/15 229/18</p> <p>feet [9] 185/4 185/15 185/24 206/19 207/3 223/10 223/16 224/6 229/20</p> <p>felt [3] 196/8 208/23 208/24</p> <p>female [2] 184/18 186/5</p> <p>females [2] 225/3 225/7</p> <p>few [2] 183/5 236/22</p> <p>FILE [1] 176/10</p> <p>filed [1] 225/24</p> <p>final [1] 234/16</p> <p>find [2] 216/14 238/6</p> <p>fine [1] 222/13</p> <p>finish [1] 214/2</p> <p>fire [1] 208/22</p> <p>firearms [1] 235/7</p> <p>fired [4] 196/12 208/24 209/4 209/6</p> <p>fires [1] 230/21</p> <p>first [4] 214/24 241/14 243/17 252/21</p> <p>five [1] 230/21</p> <p>flushed [2] 201/21 202/10</p>	<p>G</p> <p>GARDEN [1] 176/16</p> <p>gas [1] 205/3</p> <p>gave [7] 202/22 210/11 211/11 212/4 215/21 215/22 222/3</p> <p>general [1] 186/8</p> <p>get [11] 177/2 177/11 183/23 189/24 194/10 203/25 204/5 209/13 224/23 230/8 249/9</p> <p>gets [2] 229/16 244/12</p> <p>getting [4] 193/22 195/22 212/12 247/24</p> <p>girl [1] 189/20</p> <p>girlfriend [8] 195/9 196/19 201/5 209/7 210/7 230/8 231/2 254/16</p> <p>give [2] 202/17 239/20</p> <p>Given [1] 202/19</p> <p>gives [2] 180/7 245/3</p> <p>giving [2] 179/11 197/20</p> <p>glass [5] 206/10 206/11 207/6 207/10 208/7</p> <p>go [12] 182/5 189/24 198/2 200/2 200/13 207/19 210/5 213/21 218/25 228/22 229/18 249/4</p> <p>goal [1] 190/10</p> <p>godmother [2] 198/10 198/20</p> <p>goes [4] 189/7 204/3 248/23 252/3</p> <p>going [27] 178/11 183/1 188/14 189/24 190/17 194/22 195/1 214/5 214/6 214/17 216/15 218/11 218/16 222/5 222/11 227/22 228/22 228/24 229/10 230/4 230/5 231/1 239/16 240/24 247/15 248/16 248/18</p> <p>gold [3] 205/8 205/9 244/18</p> <p>gone [2] 192/23 249/25</p> <p>good [4] 181/17 181/18 254/25 255/1</p> <p>got [14] 184/5 184/19 185/20 186/6 194/3 195/24 201/21 202/24 204/8 204/11 204/13 208/13 228/7 249/19</p> <p>Grandmother [3] 197/16 197/18 198/12</p> <p>grandmother [1] 198/9</p> <p>ground [1] 224/16</p> <p>grounds [5] 216/12 218/6 220/10 246/11 251/5</p> <p>guess [10] 185/16 185/17 195/24 196/19 197/7 199/21 202/20 207/18 208/13 240/14</p> <p>gun [12] 193/1 193/5 193/7 193/12 196/5 209/12 209/25 230/22 231/2 231/6 232/6 243/21</p> <p>gunshot [2] 184/11 184/14</p> <p>gunshots [1] 211/14</p> <p>guy [14] 202/3 203/21 204/1 204/1 204/4 204/14 204/15 205/22 206/1 208/21 208/22</p>

G	215/24 216/4 219/5 219/9 222/21 228/12 228/24 229/19 231/1 231/7 231/13 231/14 231/20 233/21 235/13 243/1 244/19 244/20 244/22 244/24 245/3 247/24 250/21 252/10 253/24	inspector [5] 175/16 176/3 178/20 227/10 227/24 instance [5] 194/13 194/14 244/7 244/15 246/22 infect [1] 224/15 infect [6] 187/12 190/7 190/9 190/12 190/25 195/8 interact [2] 198/13 240/6 interpret [2] 192/21 195/18 interview [3] 210/15 211/21 251/24 interviewed [9] 197/14 211/25 221/1 221/11 240/7 252/10 253/1 253/22 253/24 interviewing [2] 216/4 216/4 interviews [5] 207/25 215/2 218/18 221/7 221/8 intimidated [1] 229/15 intimated [9] 217/22 251/22 252/8 252/20 253/2 253/11 253/16 253/23 254/5 intoxication [2] 252/4 252/17 introduce [1] 220/16 investigate [6] 198/16 198/23 199/17 200/7 200/11 201/23 investigated [1] 213/3 investigating [2] 198/15 214/1 investigation [12] 182/2 191/4 204/6 213/6 215/3 225/17 226/17 227/16 231/24 239/12 240/6 254/13 investigator [1] 218/17 investigators [1] 191/22 irrationally [2] 246/23 247/9 irrelevant [5] 218/8 219/25 220/1 220/13 238/24 is [153] isn't [6] 203/14 205/24 212/13 243/24 248/4 248/14 ISRAEL [2] 176/20 177/21 issue [1] 237/14 issued [8] 233/17 233/19 234/20 234/25 236/12 242/6 242/18 243/12 it [139] it's [41] 179/14 181/6 183/22 187/3 187/24 187/24 191/4 191/20 192/22 205/2 205/3 205/4 205/8 205/18 206/20 206/22 207/19 208/3 208/4 212/13 212/23 215/16 217/8 218/7 218/21 219/25 220/16 222/13 223/23 223/24 223/25 225/8 228/2 233/3 234/2 236/9 240/14 242/17 248/18 253/3 253/20 item [1] 244/17 its [1] 239/21
H	head [26] 178/19 187/3 194/16 194/17 196/5 196/19 199/22 201/5 201/8 206/21 210/6 219/25 222/22 225/24 225/25 228/22 230/2 230/9 232/3 232/9 234/12 238/12 239/7 246/16 247/22 252/12 headn't [1] 221/8 head [2] 230/3 258/8 handcuffs [1] 243/21 handing [1] 223/25 happen [2] 186/22 187/15 happened [12] 193/4 193/10 197/8 197/9 204/6 208/9 209/15 210/8 217/12 217/15 217/24 227/17 has [9] 182/4 184/15 217/8 240/7 243/17 244/12 252/11 252/20 253/16 have [78] 179/3 179/9 180/11 181/9 183/18 183/19 185/13 186/10 186/11 186/24 186/25 188/9 188/14 191/2 191/17 194/7 195/16 195/24 201/15 204/18 206/23 207/8 213/3 214/8 217/8 217/21 219/21 221/2 221/4 221/5 221/6 221/7 221/10 222/4 225/6 225/20 228/25 230/2 230/10 230/11 230/11 231/4 231/22 232/4 232/4 232/5 232/6 232/24 235/9 240/1 240/16 241/1 241/9 241/19 242/22 243/4 245/24 246/2 246/16 246/17 246/17 246/18 246/22 247/14 247/16 247/17 249/1 249/25 250/4 250/6 250/8 250/14 250/20 251/9 251/12 251/13 251/19 254/19 haven't [2] 180/14 213/10 having [2] 185/16 201/14 he [251] he'd [1] 186/10 he's [4] 230/18 230/19 231/10 231/10 head [2] 195/23 231/8 hear [1] 215/4 heard [6] 184/11 189/18 205/11 205/13 237/8 253/13 hearing [8] 175/17 176/3 177/2 178/8 178/23 180/4 216/25 232/14 hearings [2] 180/11 225/13 heart [2] 248/24 252/4 help [1] 227/24 helped [1] 224/11 her [35] 185/17 189/20 191/5 197/14 197/15 198/2 198/7 198/9 198/20 216/14 216/15 217/1 217/4 217/5 218/16 218/17 219/7 219/12 219/15 220/11 228/17 227/22 227/23 228/22 228/25 229/4 229/6 229/7 229/10 240/3 240/4 245/8 246/12 254/4 254/17 here [14] 178/7 179/5 180/2 181/10 181/14 199/14 200/7 207/22 212/8 227/23 227/24 241/22 243/4 254/22 herby [1] 258/4 herself [1] 186/12 high [2] 183/24 201/21 high-pressure [1] 183/24 highly [1] 191/4 HOLLER [6] 176/9 177/4 179/10 214/17 241/13 257/5 hits [1] 202/15 him [66] 184/24 186/11 187/2 187/4 188/1 189/13 189/16 189/18 190/6 190/13 190/14 191/8 191/17 192/15 192/17 193/2 193/6 193/8 193/13 194/15 194/17 195/19 195/19 198/13 198/15 201/6 201/13 201/22 203/6 203/10 206/16 208/25 209/4 209/5 209/6 211/14 212/3 212/4 212/10 212/11 212/12	himself [10] 180/5 186/10 190/15 190/22 191/3 191/5 196/17 208/25 209/6 240/13 hints [1] 178/24 his [109] hit [2] 208/23 214/22 hits [1] 231/6 hitting [1] 209/13 holding [1] 181/24 hood [1] 228/16 hospital [4] 192/19 210/7 210/8 211/13 house [6] 185/5 185/13 186/6 223/7 224/18 247/1 how [23] 178/20 184/8 185/1 186/2 194/1 195/7 195/7 197/10 197/18 206/6 206/9 207/13 207/14 207/16 207/22 212/15 218/13 218/19 223/4 223/15 228/4 247/3 247/12 Hunter [5] 251/23 252/21 252/24 253/17 253/21 Huntington [1] 202/15 husband [1] 229/4
I	I'd [3] 178/4 195/16 232/12 I'm [10] 179/4 180/9 180/12 180/25 210/3 215/12 217/10 218/25 222/9 227/12 I'm [29] 178/11 179/14 179/24 180/17 181/24 182/6 183/1 188/13 189/3 190/8 190/10 200/11 200/19 208/6 210/21 211/20 214/6 217/4 217/7 218/16 219/7 219/12 219/15 220/25 222/5 230/5 234/2 241/17 248/18 I've [2] 205/11 205/13 IAU [1] 182/7 idea [2] 201/15 201/18 identified [3] 190/15 191/3 196/16 identity [1] 191/5 identifying [1] 190/22 ignition [1] 204/23 ignorance [1] 179/5 ignore [1] 248/19 III [1] 178/10 inaccurate [1] 225/1 incident [20] 184/9 185/3 185/10 186/2 193/4 193/9 193/20 211/11 215/22 215/22 220/7 221/16 221/18 223/21 224/2 228/6 229/21 231/22 239/6 254/11 includes [1] 244/4 including [1] 213/22 inconsistencies [2] 191/1 226/14 inconsistent [1] 217/20 increase [3] 205/7 205/16 215/18 independent [1] 228/2 Independently [1] 201/24 INDEX [1] 257/1 indicate [2] 195/14 237/12 indicated [2] 192/9 253/9 indicates [1] 207/1 individual [2] 250/1 250/25 individuals [1] 179/9 information [7] 198/20 199/23 200/3 201/8 213/21 221/24 222/4 inhabited [1] 224/11 initial [2] 193/19 212/10 initiated [1] 212/5 initiated [1] 228/13 injured [1] 186/20 inside [1] 223/7	inspector [5] 175/16 176/3 178/20 227/10 227/24 instance [5] 194/13 194/14 244/7 244/15 246/22 infect [1] 224/15 infect [6] 187/12 190/7 190/9 190/12 190/25 195/8 interact [2] 198/13 240/6 interpret [2] 192/21 195/18 interview [3] 210/15 211/21 251/24 interviewed [9] 197/14 211/25 221/1 221/11 240/7 252/10 253/1 253/22 253/24 interviewing [2] 216/4 216/4 interviews [5] 207/25 215/2 218/18 221/7 221/8 intimidated [1] 229/15 intimated [9] 217/22 251/22 252/8 252/20 253/2 253/11 253/16 253/23 254/5 intoxication [2] 252/4 252/17 introduce [1] 220/16 investigate [6] 198/16 198/23 199/17 200/7 200/11 201/23 investigated [1] 213/3 investigating [2] 198/15 214/1 investigation [12] 182/2 191/4 204/6 213/6 215/3 225/17 226/17 227/16 231/24 239/12 240/6 254/13 investigator [1] 218/17 investigators [1] 191/22 irrationally [2] 246/23 247/9 irrelevant [5] 218/8 219/25 220/1 220/13 238/24 is [153] isn't [6] 203/14 205/24 212/13 243/24 248/4 248/14 ISRAEL [2] 176/20 177/21 issue [1] 237/14 issued [8] 233/17 233/19 234/20 234/25 236/12 242/6 242/18 243/12 it [139] it's [41] 179/14 181/6 183/22 187/3 187/24 187/24 191/4 191/20 192/22 205/2 205/3 205/4 205/8 205/18 206/20 206/22 207/19 208/3 208/4 212/13 212/23 215/16 217/8 218/7 218/21 219/25 220/16 222/13 223/23 223/24 223/25 225/8 228/2 233/3 234/2 236/9 240/14 242/17 248/18 253/3 253/20 item [1] 244/17 its [1] 239/21
J	jail [2] 180/24 190/17 Jo [4] 181/8 256/8 256/12 257/3 Jo-Ann [4] 181/8 256/8 256/12 257/3 JOANNE [2] 176/24 177/14 job [4] 198/16 227/10 245/18 246/20 join [1] 231/20 joined [1] 231/19 judge [1] 179/16 July [2] 200/15 200/17 jump [1] 214/21 jurat [1] 255/9 just [38] 178/3 179/1 180/17 180/18 181/19 182/5 183/3 186/8 186/21 190/25 194/24 195/2 201/24 204/20 205/5 212/16 213/14 214/22 214/24 215/7 215/12 217/9 217/23 219/19 220/17 223/1 224/13 231/1 231/13 234/23 237/7 238/23 240/14 241/10 245/7 250/19 253/7 255/3	inspector [5] 175/16 176/3 178/20 227/10 227/24 instance [5] 194/13 194/14 244/7 244/15 246/22 infect [1] 224/15 infect [6] 187/12 190/7 190/9 190/12 190/25 195/8 interact [2] 198/13 240/6 interpret [2] 192/21 195/18 interview [3] 210/15 211/21 251/24 interviewed [9] 197/14 211/25 221/1 221/11 240/7 252/10 253/1 253/22 253/24 interviewing [2] 216/4 216/4 interviews [5] 207/25 215/2 218/18 221/7 221/8 intimidated [1] 229/15 intimated [9] 217/22 251/22 252/8 252/20 253/2 253/11 253/16 253/23 254/5 intoxication [2] 252/4 252/17 introduce [1] 220/16 investigate [6] 198/16 198/23 199/17 200/7 200/11 201/23 investigated [1] 213/3 investigating [2] 198/15 214/1 investigation [12] 182/2 191/4 204/6 213/6 215/3 225/17 226/17 227/16 231/24 239/12 240/6 254/13 investigator [1] 218/17 investigators [1] 191/22 irrationally [2] 246/23 247/9 irrelevant [5] 218/8 219/25 220/1 220/13 238/24 is [153] isn't [6] 203/14 205/24 212/13 243/24 248/4 248/14 ISRAEL [2] 176/20 177/21 issue [1] 237/14 issued [8] 233/17 233/19 234/20 234/25 236/12 242/6 242/18 243/12 it [139] it's [41] 179/14 181/6 183/22 187/3 187/24 187/24 191/4 191/20 192/22 205/2 205/3 205/4 205/8 205/18 206/20 206/22 207/19 208/3 208/4 212/13 212/23 215/16 217/8 218/7 218/21 219/25 220/16 222/13 223/23 223/24 223/25 225/8 228/2 233/3 234/2 236/9 240/14 242/17 248/18 253/3 253/20 item [1] 244/17 its [1] 239/21
K	K-L-U-G [1] 184/3 KAREN [2] 176/22 177/12	

K	lots [1] 245/11 living [1] 212/21	245/19 251/11 251/12 254/8 254/14 Morroughs's [9] 195/18 195/22 281/20 215/20 219/23 228/21 222/11 226/9 249/12 most [2] 250/4 250/5
KEARON [1] 176/12	M	mother [1] 198/9
keep [3] 235/9 243/4 252/6	maize [1] 243/21	motion [1] 217/17
kept [1] 238/2	made [11] 178/4 186/4 199/8 213/17 217/16 228/18 231/20 239/1 249/8 251/11 251/12	motivated [1] 218/13
kiss [1] 230/5	mailbox [2] 224/14 224/16	motivation [1] 239/18
kiss [3] 179/16 205/8 216/25	maintain [1] 244/17	motor [1] 285/17
kiss [1] 243/20	make [18] 188/2 182/6 188/17 194/21 194/24 195/14 195/20 199/9 205/14 206/16 222/24 227/12 227/24 228/2 228/15 230/14 254/9 255/5	move [6] 196/2 196/10 220/3 222/22 248/12 253/7
Klag [8] 183/8 183/9 184/2 184/3 184/4 223/5 224/23 230/18	make [18] 188/2 182/6 188/17 194/21 194/24 195/14 195/20 199/9 205/14 206/16 222/24 227/12 227/24 228/2 228/15 230/14 254/9 255/5	moving [4] 182/7 215/16 222/19 222/21
Klag's [6] 223/3 224/11 224/17 224/21 226/10 247/11	males [2] 205/4 205/21	Mr [25] 181/6 183/7 191/8 195/18 197/17 197/18 198/12 199/9 203/2 215/20 217/13 217/18 221/11 223/15 224/4 228/12 230/4 231/3 231/6 231/11 241/7 247/1 247/10 257/4 257/6
Klong [2] 183/6 183/7	making [9] 182/18 199/18 201/15 215/5 225/11 237/7 238/13 239/1 248/20	Mc [18] 183/6 184/2 190/11 195/22 197/16 221/14 222/11 224/11 224/17 224/21 224/23 228/7 228/14 229/13 229/14 230/2 230/13 231/10
knew [5] 199/12 225/24 226/4 226/6 240/22	many [5] 187/3 197/10 230/9 232/3 236/22	Mr. Grandinetti [1] 197/16
knocked [4] 208/13 208/17 208/19 209/25	MARCH [1] 175/10	Mr. Klag [2] 184/2 224/23
knocking [1] 231/15	MARION [1] 176/12	Mr. Klag's [3] 224/11 224/17 224/21
know [35] 180/24 188/22 195/7 195/7 195/24 200/18 206/6 206/9 206/10 206/13 206/18 207/20 209/25 213/12 213/15 215/2 215/23 216/3 217/12 221/13 221/13 221/20 227/21 229/11 233/9 234/8 234/11 234/13 236/23 239/9 239/12 244/5 244/5 247/13 252/9	Mark [1] 232/16	Mr. Klong [1] 183/6
knowledge [3] 184/15 191/11 212/5	marked [3] 178/13 232/15 232/19	Mr. Morroughs [9] 190/11 221/14 228/7 228/14 229/13 229/14 230/2 230/13 231/10
Kristie [9] 185/19 189/22 190/16 197/6 197/17 197/11 197/12 198/20 201/6	match [1] 228/13	Mr. Morroughs's [2] 195/22 222/11
L	matter [1] 258/5	Mrs. [1] 228/22
back [1] 234/6	may [10] 181/12 181/14 189/4 191/2 217/21 219/21 225/6 230/2 231/4 240/20	Mrs. Bient [1] 228/22
base [7] 205/25 206/2 206/3 206/4 206/17 207/2 230/17	maybe [3] 185/4 198/10 223/24	Ms [6] 180/20 199/9 247/19 251/1 251/13 257/5
language [2] 190/22 247/10	me [28] 178/18 179/15 180/7 180/21 196/16 197/13 197/20 197/20 200/9 201/21 201/25 202/9 202/10 202/17 202/24 203/24 206/21 207/3 208/6 208/25 209/13 209/13 229/16 230/1 231/1 236/25 242/1 256/14	Ms. [4] 197/21 201/25 202/11 214/17
largely [1] 218/12	mean [8] 191/20 192/21 192/22 206/1 207/21 235/25 236/6 238/23	Ms. Hiller [1] 214/17
larger [2] 182/1 182/11	means [4] 234/23 235/20 236/3 236/7	Ms. Mondo [3] 197/21 201/25 202/11
later [2] 204/6 204/9	meant [1] 210/5	much [1] 185/1
law [1] 179/16	met [1] 254/21	multiple [1] 226/11
lawful [2] 190/3 240/24	member [1] 179/17	murder [2] 187/11 188/10
lawyer [2] 207/20 235/25	members [5] 179/22 233/13 235/1 235/9 242/2	my [41] 177/25 179/5 182/15 184/22 187/3 189/11 190/16 191/3 191/11 201/21 203/19 203/25 204/5 204/13 204/16 204/16 205/12 208/23 209/11 209/12 209/24 210/1 210/4 210/5 210/7 213/5 214/4 222/6 222/13 227/13 228/4 228/19 246/6 248/18 248/20 252/2 253/4 254/1 254/2 258/7 258/8
lawyers [3] 199/5 199/13 199/16	mentioned [1] 251/21	N
leaves [1] 215/15	met [2] 180/3 212/3	naïveté [1] 179/5
least [2] 186/4 228/15	MICHAEL [2] 175/16 176/3	name [4] 185/17 189/20 197/15 252/21
leave [4] 191/9 194/7 229/17 250/25	mid [1] 203/21	NASSAU [10] 175/2 175/7 176/5 171/5 171/12 171/15 235/8 235/14 251/25 258/5
leaving [1] 194/12	mid-20s [1] 203/21	narcotics [1] 180/24
left [6] 201/22 230/3 230/73 247/19 250/8 258/14	middle [3] 230/17 230/24 250/2	near [3] 205/23 208/21 224/17
legal [13] 176/21 176/22 176/24 177/13 177/15 177/19 177/22 178/21 178/25 179/6 179/22 237/14 241/8	might [4] 179/3 214/21 214/23 223/23	necessity [1] 182/13
LESLIE [3] 176/9 177/14 241/13	mind [4] 182/24 227/123 227/123 240/2	need [2] 181/10 222/12
let [6] 177/8 180/19 186/22 187/1 236/25 242/11	MINNOLA [2] 175/9 176/8	needed [1] 240/23
Let's [1] 204/20	misinformation [1] 224/5	needs [2] 245/10 245/11
level [1] 215/16	mislead [1] 214/10	neighbor [1] 243/9
license [1] 238/4	mirrors [1] 229/6	never [3] 191/12 195/23 231/20
lie [1] 218/13	misconduct [2] 210/19 210/25	NEW [8] 175/2 175/9 176/8 176/16 202/13 228/6 258/3 258/16
life [2] 205/12 231/25	misplaced [1] 192/22	next [5] 203/20 247/20 248/13 249/4 253/7
light [2] 206/16 224/17	Miss [1] 179/10	night [11] 190/17 191/17 195/13 217/25 219/22 220/7 228/5 232/10 251/24 252/13 253/24
lights [2] 201/15 224/13	Miss Hiller [1] 179/10	no [51] 175/3 175/5 180/10 182/9 182/9 182/9 182/13 182/25 183/22 184/10 184/15 189/8 192/5 192/18 193/17 194/15 194/16 195/1 195/5 195/10 195/21 198/1 200/21 201/17 201/19 205/10 207/9 208/2 211/17 221/3 222/15 222/18 226/14 230/6 230/23 232/1 232/7 236/2 237/13 242/9 242/24
like [10] 178/4 179/8 179/16 181/25 186/14 189/4 205/8 210/4 232/12 235/22	mistakenly [1] 185/17	
likely [3] 191/4 250/4 250/5	Monday [1] 254/22	
list [5] 235/9 235/22 236/10 236/17 238/5	Mondo [10] 185/19 189/22 197/4 197/7 197/21 199/9 201/25 202/11 202/20 203/3	
lists [1] 243/5	months [2] 240/8 240/9	
little [5] 204/9 214/22 214/25 229/15 241/25	more [3] 187/14 200/4 250/20	
lived [1] 190/10	morning [9] 181/1 181/17 181/18 183/2 188/4 215/21 219/23 221/16 221/22	
lives [1] 183/16	Morroughs [57] 187/18 188/3 189/9 189/15 189/18 190/9 190/11 190/15 190/24 190/25 191/8 191/17 193/19 196/19 197/4 197/17 198/16 199/9 199/21 203/2 203/6 208/24 209/9 209/21 210/23 216/5 217/13 217/18 218/1 221/1 221/11 221/14 222/13 223/15 224/4 225/12 225/21 228/7 228/12 228/14 229/13 229/14 230/2 230/4 230/13 231/3 231/6 231/10 231/12 232/6 247/11 249/15	
LJP [1] 176/12		
logic [1] 230/6		
look [4] 200/20 222/12 242/21 243/22		
looking [1] 185/1		
looks [2] 181/25 210/4		
lost [11] 192/9 192/12 192/15 192/17 192/20 192/22 192/22 192/24 192/24 228/10 228/24		
lot [4] 183/1 199/22 201/14 215/20		

<p>N</p> <p>no. [10] 244/23 245/17 245/19 247/12 247/11 248/9 251/2 253/25 254/15 255/3</p> <p>nobody [1] 184/23</p> <p>noise [9] 205/4 205/5 205/7 205/15 205/18 205/21 215/5 215/16 215/18</p> <p>none [1] 195/24</p> <p>normal [2] 205/16 226/16</p> <p>north [2] 203/13 258/15</p> <p>not [86]</p> <p>NOTARY [3] 256/18 258/3 258/16</p> <p>noted [5] 179/13 218/25 239/20 249/5 253/20</p> <p>notes [1] 258/7</p> <p>nothing [6] 213/25 252/11 252/20 253/16 254/18 254/19</p> <p>notice [1] 225/24</p> <p>now [6] 177/12 216/13 219/7 229/15 241/10 254/2</p> <p>number [5] 182/4 184/5 193/16 200/6 224/3</p> <p>numerosus [1] 231/7</p>	<p>ones [2] 192/3 235/3</p> <p>only [18] 179/24 185/15 199/7 208/5 216/14 235/4 235/5 249/24 250/5 255/7</p> <p>open [2] 231/4 231/15</p> <p>opened [2] 208/15 209/24</p> <p>operate [1] 194/1</p> <p>operation [2] 208/18 240/2</p> <p>opinion [28] 182/20 187/3 187/22 187/24 189/11 190/21 191/20 191/21 215/2 216/14 216/16 216/22 217/1 217/2 217/8 220/11 225/11 228/4 228/19 238/18</p> <p>opposed [1] 236/10</p> <p>options [6] 187/4 230/9 232/3 239/7 246/16 247/22</p> <p>order [1] 214/24</p> <p>organization [1] 237/5</p> <p>organized [1] 237/9</p> <p>Originally [1] 185/22</p> <p>other [35] 184/24 185/10 186/20 187/3 195/6 207/21 207/24 210/21 212/9 212/19 215/4 221/24 224/20 225/3 225/7 226/11 230/9 232/3 233/16 239/7 241/1 242/5 242/18 242/25 243/6 243/10 243/13 243/15 243/15 246/16 247/22 251/19 251/23 252/22 252/24</p> <p>others [1] 192/7</p> <p>our [4] 177/12 178/2 180/2 186/17</p> <p>out [33] 184/19 185/1 185/7 185/8 185/20 186/6 189/17 189/24 190/13 190/23 190/24 191/10 191/12 191/14 193/22 194/3 196/5 203/25 204/5 204/8 204/11 209/13 224/8 224/23 230/8 247/17 247/19 247/24 249/9 249/19 250/11 250/15 252/22</p> <p>outside [7] 180/9 225/4 248/11 248/21 251/25 252/1 253/4</p> <p>over [8] 178/12 186/16 197/1 228/11 228/16 229/9 231/2 231/15</p> <p>Overruled [2] 239/15 244/1</p> <p>own [1] 227/13</p> <p>ownership [1] 244/16</p> <p>owns [1] 244/7</p>	<p>247/20 250/16</p> <p>person's [1] 187/12</p> <p>personal [1] 244/17</p> <p>personally [3] 198/7 233/13 242/2</p> <p>personnel [1] 252/25</p> <p>photos [1] 223/25</p> <p>phrase [1] 241/22</p> <p>phrasing [1] 227/18</p> <p>physical [1] 207/9</p> <p>pick [1] 212/15</p> <p>picked [1] 192/3</p> <p>picking [1] 191/24</p> <p>pissed [1] 202/25</p> <p>pistol [2] 180/11 238/4</p> <p>place [5] 185/3 185/10 193/18 211/12 249/24</p> <p>plaintiff [2] 225/21 225/23</p> <p>Plaintiff's [1] 232/19</p> <p>please [1] 233/12</p> <p>POD [1] 234/21</p> <p>point [23] 181/7 189/9 190/4 194/6 194/15 196/4 196/16 196/18 197/2 199/22 208/16 211/3 211/7 229/9 229/13 229/22 231/9 231/17 242/17 247/25 249/7 250/12 250/19</p> <p>pointing [1] 241/23</p> <p>points [1] 214/22</p> <p>police [58] 175/2 175/5 175/7 176/5 177/5 177/13 177/15 187/5 187/19 188/3 188/7 188/16 189/16 190/14 190/15 190/23 191/6 192/25 193/5 195/13 196/17 196/21 199/14 209/14 211/11 211/15 212/21 213/9 213/18 216/20 217/2 218/1 218/9 218/12 219/21 221/2 221/12 228/8 228/8 231/13 235/8 235/14 240/1 242/8 242/19 243/19 246/18 247/3 248/1 248/1 248/3 248/5 248/6 248/7 248/14 251/21 252/25 258/5</p> <p>portion [6] 204/23 205/4 213/22 249/15 250/16 253/18</p> <p>portions [4] 210/14 226/20 226/22 226/24</p> <p>posed [1] 247/11</p> <p>posing [2] 246/23 248/17</p> <p>possible [4] 206/18 212/23 225/6 225/8</p> <p>possibly [1] 240/1</p> <p>post [1] 234/15</p> <p>potential [1] 225/23</p> <p>potentially [3] 187/11 243/22 246/19</p> <p>pre [1] 236/4</p> <p>pre-cursors [1] 236/4</p> <p>PRECINCT [1] 176/23</p> <p>precipitated [1] 184/14</p> <p>preliminarily [1] 178/2</p> <p>preliminary [1] 222/3</p> <p>prepared [1] 182/12</p> <p>present [2] 176/19 177/10</p> <p>presented [3] 201/25 240/23 240/25</p> <p>pressure [1] 183/24</p> <p>presumably [1] 242/19</p> <p>prior [3] 207/25 237/11 237/13</p> <p>Prison [6] 185/12 185/16 187/1 194/1 200/22 204/22</p> <p>private [2] 180/8 244/8</p> <p>problems [2] 180/10 204/18</p> <p>procedural [1] 179/2</p> <p>procedure [2] 179/11 180/15</p> <p>procedures [1] 180/22</p> <p>proceed [4] 181/12 214/5 214/6 256/3</p> <p>process [1] 180/3</p> <p>product [1] 213/17</p> <p>Professional [1] 258/2</p> <p>progresses [1] 230/14</p> <p>proper [4] 233/14 233/15 242/3 242/4</p> <p>property [9] 233/17 242/6 242/8 242/18 243/7 243/10 243/14 243/18 244/8</p> <p>proposition [1] 186/8</p>
<p>O</p> <p>olio [1] 256/7</p> <p>Oakwood [6] 183/15 203/13 203/17 206/3 230/17 230/24</p> <p>oath [2] 181/20 214/16</p> <p>object [1] 222/5</p> <p>objected [1] 227/19</p> <p>objecting [2] 246/8 253/17</p> <p>objection [35] 187/13 188/11 188/12 188/14 188/21 211/2 215/7 216/10 216/24 218/4 218/25 219/14 219/24 220/8 227/9 238/15 238/19 238/22 239/11 239/14 239/20 240/18 240/20 243/25 245/7 246/5 248/10 248/21 251/3 251/15 251/16 251/25 253/3</p> <p>objectionable [1] 216/15</p> <p>obligated [3] 188/16 188/22 188/23</p> <p>obligations [1] 246/2</p> <p>observers [1] 177/11</p> <p>observing [2] 183/24 229/5</p> <p>obvious [1] 202/6</p> <p>obviously [2] 203/17 203/22</p> <p>occurred [1] 191/3</p> <p>occurring [1] 229/2</p> <p>odd [2] 179/8 179/15</p> <p>off [21] 202/14 202/25 232/9 233/24 233/25 234/6 234/15 235/2 235/10 235/13 236/8 236/21 236/22 236/23 237/20 237/25 238/9 243/5 244/4 248/7 248/18</p> <p>off-duty [7] 233/24 233/25 234/6 234/15 235/2 237/25 238/9</p> <p>office [6] 179/18 179/20 216/21 217/12 217/17 217/19</p> <p>officer [105]</p> <p>officers [12] 186/15 188/16 192/25 193/5 198/23 217/21 242/22 243/19 246/19 247/3 248/6 248/7</p> <p>Oh [2] 182/9 210/3</p> <p>okay [35] 178/1 179/4 180/12 180/25 181/2 181/21 182/3 182/17 182/23 183/4 183/22 185/7 186/1 186/18 201/5 202/12 202/24 203/12 204/13 205/22 208/2 210/11 211/9 211/24 213/25 214/4 214/9 215/19 216/17 217/10 220/2 222/9 227/8 234/19 237/16 254/3 256/1 256/4</p> <p>OLD [1] 176/14</p> <p>on-duty [1] 233/24</p> <p>once [2] 197/12 251/13</p> <p>one [18] 178/6 178/24 179/6 179/9 179/24 180/7 181/25 186/4 201/9 205/11 225/6 229/16 233/6 234/5 235/5 236/4 250/14 255/7</p>	<p>ones [2] 192/3 235/3</p> <p>only [18] 179/24 185/15 199/7 208/5 216/14 235/4 235/5 249/24 250/5 255/7</p> <p>open [2] 231/4 231/15</p> <p>opened [2] 208/15 209/24</p> <p>operate [1] 194/1</p> <p>operation [2] 208/18 240/2</p> <p>opinion [28] 182/20 187/3 187/22 187/24 189/11 190/21 191/20 191/21 215/2 216/14 216/16 216/22 217/1 217/2 217/8 220/11 225/11 228/4 228/19 238/18</p> <p>opposed [1] 236/10</p> <p>options [6] 187/4 230/9 232/3 239/7 246/16 247/22</p> <p>order [1] 214/24</p> <p>organization [1] 237/5</p> <p>organized [1] 237/9</p> <p>Originally [1] 185/22</p> <p>other [35] 184/24 185/10 186/20 187/3 195/6 207/21 207/24 210/21 212/9 212/19 215/4 221/24 224/20 225/3 225/7 226/11 230/9 232/3 233/16 239/7 241/1 242/5 242/18 242/25 243/6 243/10 243/13 243/15 243/15 246/16 247/22 251/19 251/23 252/22 252/24</p> <p>others [1] 192/7</p> <p>our [4] 177/12 178/2 180/2 186/17</p> <p>out [33] 184/19 185/1 185/7 185/8 185/20 186/6 189/17 189/24 190/13 190/23 190/24 191/10 191/12 191/14 193/22 194/3 196/5 203/25 204/5 204/8 204/11 209/13 224/8 224/23 230/8 247/17 247/19 247/24 249/9 249/19 250/11 250/15 252/22</p> <p>outside [7] 180/9 225/4 248/11 248/21 251/25 252/1 253/4</p> <p>over [8] 178/12 186/16 197/1 228/11 228/16 229/9 231/2 231/15</p> <p>Overruled [2] 239/15 244/1</p> <p>own [1] 227/13</p> <p>ownership [1] 244/16</p> <p>owns [1] 244/7</p>	<p>247/20 250/16</p> <p>person's [1] 187/12</p> <p>personal [1] 244/17</p> <p>personally [3] 198/7 233/13 242/2</p> <p>personnel [1] 252/25</p> <p>photos [1] 223/25</p> <p>phrase [1] 241/22</p> <p>phrasing [1] 227/18</p> <p>physical [1] 207/9</p> <p>pick [1] 212/15</p> <p>picked [1] 192/3</p> <p>picking [1] 191/24</p> <p>pissed [1] 202/25</p> <p>pistol [2] 180/11 238/4</p> <p>place [5] 185/3 185/10 193/18 211/12 249/24</p> <p>plaintiff [2] 225/21 225/23</p> <p>Plaintiff's [1] 232/19</p> <p>please [1] 233/12</p> <p>POD [1] 234/21</p> <p>point [23] 181/7 189/9 190/4 194/6 194/15 196/4 196/16 196/18 197/2 199/22 208/16 211/3 211/7 229/9 229/13 229/22 231/9 231/17 242/17 247/25 249/7 250/12 250/19</p> <p>pointing [1] 241/23</p> <p>points [1] 214/22</p> <p>police [58] 175/2 175/5 175/7 176/5 177/5 177/13 177/15 187/5 187/19 188/3 188/7 188/16 189/16 190/14 190/15 190/23 191/6 192/25 193/5 195/13 196/17 196/21 199/14 209/14 211/11 211/15 212/21 213/9 213/18 216/20 217/2 218/1 218/9 218/12 219/21 221/2 221/12 228/8 228/8 231/13 235/8 235/14 240/1 242/8 242/19 243/19 246/18 247/3 248/1 248/1 248/3 248/5 248/6 248/7 248/14 251/21 252/25 258/5</p> <p>portion [6] 204/23 205/4 213/22 249/15 250/16 253/18</p> <p>portions [4] 210/14 226/20 226/22 226/24</p> <p>posed [1] 247/11</p> <p>posing [2] 246/23 248/17</p> <p>possible [4] 206/18 212/23 225/6 225/8</p> <p>possibly [1] 240/1</p> <p>post [1] 234/15</p> <p>potential [1] 225/23</p> <p>potentially [3] 187/11 243/22 246/19</p> <p>pre [1] 236/4</p> <p>pre-cursors [1] 236/4</p> <p>PRECINCT [1] 176/23</p> <p>precipitated [1] 184/14</p> <p>preliminarily [1] 178/2</p> <p>preliminary [1] 222/3</p> <p>prepared [1] 182/12</p> <p>present [2] 176/19 177/10</p> <p>presented [3] 201/25 240/23 240/25</p> <p>pressure [1] 183/24</p> <p>presumably [1] 242/19</p> <p>prior [3] 207/25 237/11 237/13</p> <p>Prison [6] 185/12 185/16 187/1 194/1 200/22 204/22</p> <p>private [2] 180/8 244/8</p> <p>problems [2] 180/10 204/18</p> <p>procedural [1] 179/2</p> <p>procedure [2] 179/11 180/15</p> <p>procedures [1] 180/22</p> <p>proceed [4] 181/12 214/5 214/6 256/3</p> <p>process [1] 180/3</p> <p>product [1] 213/17</p> <p>Professional [1] 258/2</p> <p>progresses [1] 230/14</p> <p>proper [4] 233/14 233/15 242/3 242/4</p> <p>property [9] 233/17 242/6 242/8 242/18 243/7 243/10 243/14 243/18 244/8</p> <p>proposition [1] 186/8</p>
	<p>P</p> <p>pan [1] 200/25</p> <p>P.O. [1] 237/20</p> <p>page [2] 255/8 258/6</p> <p>paid [1] 244/9</p> <p>parallel [1] 185/22</p> <p>parked [2] 203/16 206/5</p> <p>parking [1] 206/4</p> <p>part [5] 181/25 183/19 225/17 243/17 245/18</p> <p>partially [1] 228/15</p> <p>particular [3] 186/1 214/24 242/16</p> <p>parties [1] 212/19</p> <p>parts [3] 227/1 227/2 227/2</p> <p>party [1] 197/25</p> <p>pass [2] 178/11 232/13</p> <p>passed [5] 178/12 201/21 202/24 203/4 232/22</p> <p>passenger [6] 184/18 185/12 186/5 187/6 203/19 224/23</p> <p>passing [1] 203/7</p> <p>past [2] 183/19 203/10</p> <p>patrol [1] 242/15</p> <p>PBA [2] 176/23 177/10</p> <p>Pend [1] 217/16</p> <p>pedigree [1] 213/22</p> <p>people [3] 186/16 211/15 215/4</p> <p>per [2] 229/20 230/17</p> <p>percent [1] 226/12</p> <p>period [1] 242/16</p> <p>permit [1] 244/13</p> <p>persuant [1] 237/22</p> <p>person [6] 195/23 210/18 210/24 231/12</p>	

<p>P</p> <p>persecuted [1] 179/19 persecuting [1] 179/7 prosecutor [2] 180/2 180/5 protect [3] 208/25 209/6 209/6 prove [1] 217/19 public [4] 199/7 256/18 258/3 258/16 publicity [2] 199/4 199/13 pull [4] 189/16 190/24 195/2 229/1 pulled [9] 203/20 207/23 212/25 228/11 228/12 228/12 247/20 249/15 251/14 pulling [3] 190/23 193/22 212/11 punch [1] 231/7 punched [2] 190/6 191/8 PURCELL [2] 176/23 177/17 purpose [1] 236/9 pursuant [1] 233/21 put [1] 217/23 puts [2] 229/17 231/14 putting [1] 190/13</p>	<p>249/4 251/7 252/23 253/19 253/20 Record's [1] 179/12 records [2] 191/18 238/2 redirect [7] 189/5 214/8 214/11 214/17 214/19 253/5 257/5 refer [2] 181/11 223/19 referring [1] 244/3 reflect [2] 177/9 180/19 Reflecting [2] 178/13 257/11 reflects [3] 178/6 178/9 240/20 refused [4] 195/11 198/5 199/10 199/18 reg [1] 233/22 regs [3] 237/23 238/11 245/9 regular [1] 205/17 related [1] 252/6 relationship [1] 178/21 relevant [2] 213/5 213/7 relying [1] 207/19 remarkably [1] 183/23 remember [1] 225/13 remembering [1] 224/14 removed [1] 196/9 repeat [1] 219/19 repeatedly [1] 246/15 rephrase [11] 188/25 215/10 215/11 216/17 217/10 220/18 227/11 227/14 238/17 238/20 242/1 replace [1] 178/5 report [13] 181/25 182/1 182/8 182/11 182/12 206/15 215/15 221/6 223/21 224/2 229/21 252/23 254/11 REPORTER [3] 258/1 258/3 258/14 REPORTERS [1] 258/15 reports [2] 182/17 206/25 represent [2] 197/19 197/24 representative [1] 177/10 representing [1] 197/16 requally [1] 236/5 requesting [1] 245/1 require [1] 244/24 required [1] 245/15 residence [1] 198/11 respect [14] 215/19 217/13 217/24 222/21 222/25 223/14 224/7 226/19 232/8 233/18 234/19 234/24 238/2 240/4 respects [1] 218/8 RESPONDENT [1] 176/13 Response [1] 222/2 responsible [2] 233/13 242/2 results [2] 222/4 224/2 retreat [8] 186/13 186/15 186/18 186/21 191/9 239/7 246/19 246/25 retreated [3] 230/11 232/4 246/17 returned [1] 194/4 reveal [1] 190/7 revealed [2] 191/4 204/6 reverse [5] 194/25 195/1 196/7 229/17 231/14 review [1] 195/16 reviewed [4] 182/5 182/17 217/6 226/13 revolver [1] 210/1 revved [1] 204/16 revving [2] 204/18 215/1 right [40] 179/15 179/15 182/6 183/12 183/25 184/6 184/21 185/5 186/1 186/11 186/11 188/23 189/17 193/4 193/16 195/4 198/24 199/10 202/6 203/22 204/24 205/2 205/9 205/14 205/18 206/10 206/12 206/9 208/20 209/4 209/19 211/12 212/6 212/25 213/4 213/18 214/2 223/24 235/17 242/20 243/7 244/9 244/12 245/13 247/9 250/3 250/9 252/3 rights [4] 212/4 212/4 219/5 219/9</p>	<p>road [13] 176/14 183/15 185/9 202/15 203/13 203/17 206/3 228/5 228/11 230/17 230/25 249/16 250/17 roadway [4] 208/7 223/6 223/8 223/11 role [1] 180/2 roll [2] 250/22 250/23 rolled [1] 203/19 rooms [2] 177/11 192/20 rounds [1] 230/22 rouse [1] 190/24 rule [9] 233/10 233/22 234/2 241/20 242/2 242/25 243/1 243/23 244/3 rules [8] 180/22 232/13 232/18 233/3 237/23 238/10 245/9 257/12 rum [8] 186/16 187/1 187/2 187/5 199/24 222/16 231/1 246/25 rungs [1] 230/25</p>
<p>Q</p> <p>qualification [2] 235/4 235/6 qualified [3] 234/15 238/10 245/21 qualifies [1] 244/25 qualify [1] 245/24 qualifying [2] 234/17 245/2 questions [19] 177/25 178/19 215/12 220/3 220/19 238/17 239/3 240/21 242/1 244/2 246/7 246/9 248/2 248/13 249/4 251/9 252/16 253/7 253/18 questions [14] 179/2 180/15 183/5 196/20 215/20 223/1 223/3 225/9 225/13 226/8 226/9 232/8 241/2 251/19 quite [1] 231/20 quote [3] 203/21 210/18 249/8 quote/unquote [1] 210/18</p>	<p>249/4 251/7 252/23 253/19 253/20 Record's [1] 179/12 records [2] 191/18 238/2 redirect [7] 189/5 214/8 214/11 214/17 214/19 253/5 257/5 refer [2] 181/11 223/19 referring [1] 244/3 reflect [2] 177/9 180/19 Reflecting [2] 178/13 257/11 reflects [3] 178/6 178/9 240/20 refused [4] 195/11 198/5 199/10 199/18 reg [1] 233/22 regs [3] 237/23 238/11 245/9 regular [1] 205/17 related [1] 252/6 relationship [1] 178/21 relevant [2] 213/5 213/7 relying [1] 207/19 remarkably [1] 183/23 remember [1] 225/13 remembering [1] 224/14 removed [1] 196/9 repeat [1] 219/19 repeatedly [1] 246/15 rephrase [11] 188/25 215/10 215/11 216/17 217/10 220/18 227/11 227/14 238/17 238/20 242/1 replace [1] 178/5 report [13] 181/25 182/1 182/8 182/11 182/12 206/15 215/15 221/6 223/21 224/2 229/21 252/23 254/11 REPORTER [3] 258/1 258/3 258/14 REPORTERS [1] 258/15 reports [2] 182/17 206/25 represent [2] 197/19 197/24 representative [1] 177/10 representing [1] 197/16 requally [1] 236/5 requesting [1] 245/1 require [1] 244/24 required [1] 245/15 residence [1] 198/11 respect [14] 215/19 217/13 217/24 222/21 222/25 223/14 224/7 226/19 232/8 233/18 234/19 234/24 238/2 240/4 respects [1] 218/8 RESPONDENT [1] 176/13 Response [1] 222/2 responsible [2] 233/13 242/2 results [2] 222/4 224/2 retreat [8] 186/13 186/15 186/18 186/21 191/9 239/7 246/19 246/25 retreated [3] 230/11 232/4 246/17 returned [1] 194/4 reveal [1] 190/7 revealed [2] 191/4 204/6 reverse [5] 194/25 195/1 196/7 229/17 231/14 review [1] 195/16 reviewed [4] 182/5 182/17 217/6 226/13 revolver [1] 210/1 revved [1] 204/16 revving [2] 204/18 215/1 right [40] 179/15 179/15 182/6 183/12 183/25 184/6 184/21 185/5 186/1 186/11 186/11 188/23 189/17 193/4 193/16 195/4 198/24 199/10 202/6 203/22 204/24 205/2 205/9 205/14 205/18 206/10 206/12 206/9 208/20 209/4 209/19 211/12 212/6 212/25 213/4 213/18 214/2 223/24 235/17 242/20 243/7 244/9 244/12 245/13 247/9 250/3 250/9 252/3 rights [4] 212/4 212/4 219/5 219/9</p>	<p>S</p> <p>safeguard [1] 243/5 safeguarding [2] 233/15 242/4 safety [2] 230/11 239/10 said [35] 183/6 184/17 184/23 187/18 189/23 196/23 198/7 200/25 201/8 206/19 207/20 209/14 209/18 212/6 212/8 212/10 212/21 219/3 219/13 220/14 224/22 227/22 229/10 230/3 239/13 240/12 240/13 240/14 245/24 246/15 247/14 252/7 252/10 253/2 253/15 same [13] 185/9 185/11 188/11 196/19 204/5 206/16 207/1 209/9 212/16 216/24 246/2 248/20 251/15 SANTIAGO [2] 176/20 177/21 saw [9] 191/13 199/8 203/16 206/1 208/22 224/23 229/1 229/1 229/7 say [20] 182/23 185/25 191/14 191/20 197/8 197/9 199/7 207/22 208/24 211/17 216/1 222/13 222/16 222/19 223/4 238/9 241/23 248/18 254/14 254/16 saying [16] 177/24 179/14 180/17 189/15 189/23 190/14 190/15 190/16 204/22 211/3 211/18 211/20 213/8 244/6 249/7 254/4 says [16] 200/22 201/13 202/12 202/14 203/12 208/20 209/1 209/3 209/4 209/9 209/17 209/18 230/7 234/12 243/4 243/13 scene [22] 191/9 191/22 193/1 194/12 194/21 206/14 206/25 207/5 215/4 215/14 221/5 222/25 223/1 223/21 224/1 224/7 224/10 224/12 224/14 225/3 229/18 254/10 scope [6] 222/6 248/11 248/21 252/1 252/1 253/4 score [1] 234/17 scream [1] 249/21 screamed [1] 246/24 screaming [4] 229/11 247/23 250/2 250/17 seated [1] 229/5 second [2] 197/13 204/20 seconds [1] 193/9 secretary [1] 179/16 section [11] 224/3 233/4 233/9 233/11 233/22 234/1 235/2 235/10 238/4 242/1 243/2 sections [1] 233/6 see [6] 184/8 184/15 186/2 214/2 230/3 238/5 seems [1] 179/8 seen [2] 225/6 229/14 secs [1] 248/16 separate [2] 191/21 199/23 separated [1] 228/9 sergeant [13] 176/20 176/21 177/19 177/20 214/5 214/15 214/21 232/25 237/18 240/5 240/11 253/9 257/3 SERIAL [1] 175/5 serviceability [2] 233/15 242/4</p>
<p>R</p> <p>rage [1] 228/6 ram [1] 187/6 ran [1] 249/1 re [9] 224/4 241/4 241/6 246/15 248/22 252/2 253/11 254/1 257/6 re-cross [3] 241/4 241/6 257/6 re-direct [5] 246/15 248/22 252/2 253/11 254/1 re-entered [1] 224/4 reaching [1] 208/1 read [5] 219/5 219/9 224/22 233/11 252/23 reading [8] 225/16 225/18 225/20 226/2 226/5 226/6 242/24 242/25 real [1] 190/25 reality [4] 190/8 206/23 215/8 220/1 realm [1] 237/4 rearview [1] 229/6 reason [2] 231/23 238/13 reasonable [6] 191/5 206/20 206/22 227/5 250/18 250/20 reasonableness [1] 212/20 rebat [1] 213/20 recall [1] 253/14 received [1] 234/17 receiving [1] 245/2 recess [1] 214/12 recognize [2] 181/24 232/24 recognized [1] 236/9 recommendations [1] 182/18 Reconstruction [4] 206/14 221/6 224/2 229/21 Reconstructive [1] 254/10 record [16] 177/13 177/19 180/19 199/7 214/15 217/17 217/23 226/11 233/11 234/24 240/19</p>	<p>249/4 251/7 252/23 253/19 253/20 Record's [1] 179/12 records [2] 191/18 238/2 redirect [7] 189/5 214/8 214/11 214/17 214/19 253/5 257/5 refer [2] 181/11 223/19 referring [1] 244/3 reflect [2] 177/9 180/19 Reflecting [2] 178/13 257/11 reflects [3] 178/6 178/9 240/20 refused [4] 195/11 198/5 199/10 199/18 reg [1] 233/22 regs [3] 237/23 238/11 245/9 regular [1] 205/17 related [1] 252/6 relationship [1] 178/21 relevant [2] 213/5 213/7 relying [1] 207/19 remarkably [1] 183/23 remember [1] 225/13 remembering [1] 224/14 removed [1] 196/9 repeat [1] 219/19 repeatedly [1] 246/15 rephrase [11] 188/25 215/10 215/11 216/17 217/10 220/18 227/11 227/14 238/17 238/20 242/1 replace [1] 178/5 report [13] 181/25 182/1 182/8 182/11 182/12 206/15 215/15 221/6 223/21 224/2 229/21 252/23 254/11 REPORTER [3] 258/1 258/3 258/14 REPORTERS [1] 258/15 reports [2] 182/17 206/25 represent [2] 197/19 197/24 representative [1] 177/10 representing [1] 197/16 requally [1] 236/5 requesting [1] 245/1 require [1] 244/24 required [1] 245/15 residence [1] 198/11 respect [14] 215/19 217/13 217/24 222/21 222/25 223/14 224/7 226/19 232/8 233/18 234/19 234/24 238/2 240/4 respects [1] 218/8 RESPONDENT [1] 176/13 Response [1] 222/2 responsible [2] 233/13 242/2 results [2] 222/4 224/2 retreat [8] 186/13 186/15 186/18 186/21 191/9 239/7 246/19 246/25 retreated [3] 230/11 232/4 246/17 returned [1] 194/4 reveal [1] 190/7 revealed [2] 191/4 204/6 reverse [5] 194/25 195/1 196/7 229/17 231/14 review [1] 195/16 reviewed [4] 182/5 182/17 217/6 226/13 revolver [1] 210/1 revved [1] 204/16 revving [2] 204/18 215/1 right [40] 179/15 179/15 182/6 183/12 183/25 184/6 184/21 185/5 186/1 186/11 186/11 188/23 189/17 193/4 193/16 195/4 198/24 199/10 202/6 203/22 204/24 205/2 205/9 205/14 205/18 206/10 206/12 206/9 208/20 209/4 209/19 211/12 212/6 212/25 213/4 213/18 214/2 223/24 235/17 242/20 243/7 244/9 244/12 245/13 247/9 250/3 250/9 252/3 rights [4] 212/4 212/4 219/5 219/9</p>	<p>S</p> <p>safeguard [1] 243/5 safeguarding [2] 233/15 242/4 safety [2] 230/11 239/10 said [35] 183/6 184/17 184/23 187/18 189/23 196/23 198/7 200/25 201/8 206/19 207/20 209/14 209/18 212/6 212/8 212/10 212/21 219/3 219/13 220/14 224/22 227/22 229/10 230/3 239/13 240/12 240/13 240/14 245/24 246/15 247/14 252/7 252/10 253/2 253/15 same [13] 185/9 185/11 188/11 196/19 204/5 206/16 207/1 209/9 212/16 216/24 246/2 248/20 251/15 SANTIAGO [2] 176/20 177/21 saw [9] 191/13 199/8 203/16 206/1 208/22 224/23 229/1 229/1 229/7 say [20] 182/23 185/25 191/14 191/20 197/8 197/9 199/7 207/22 208/24 211/17 216/1 222/13 222/16 222/19 223/4 238/9 241/23 248/18 254/14 254/16 saying [16] 177/24 179/14 180/17 189/15 189/23 190/14 190/15 190/16 204/22 211/3 211/18 211/20 213/8 244/6 249/7 254/4 says [16] 200/22 201/13 202/12 202/14 203/12 208/20 209/1 209/3 209/4 209/9 209/17 209/18 230/7 234/12 243/4 243/13 scene [22] 191/9 191/22 193/1 194/12 194/21 206/14 206/25 207/5 215/4 215/14 221/5 222/25 223/1 223/21 224/1 224/7 224/10 224/12 224/14 225/3 229/18 254/10 scope [6] 222/6 248/11 248/21 252/1 252/1 253/4 score [1] 234/17 scream [1] 249/21 screamed [1] 246/24 screaming [4] 229/11 247/23 250/2 250/17 seated [1] 229/5 second [2] 197/13 204/20 seconds [1] 193/9 secretary [1] 179/16 section [11] 224/3 233/4 233/9 233/11 233/22 234/1 235/2 235/10 238/4 242/1 243/2 sections [1] 233/6 see [6] 184/8 184/15 186/2 214/2 230/3 238/5 seems [1] 179/8 seen [2] 225/6 229/14 secs [1] 248/16 separate [2] 191/21 199/23 separated [1] 228/9 sergeant [13] 176/20 176/21 177/19 177/20 214/5 214/15 214/21 232/25 237/18 240/5 240/11 253/9 257/3 SERIAL [1] 175/5 serviceability [2] 233/15 242/4</p>

S		
serviceable [1] 2435	southbound [1] 202/13	suspicion [1] 256/2
session [1] 177/2	speak [10] 195/8 195/9 195/11 197/10 198/2 199/10 199/18 201/3 203/2 207/21	sustain [1] 188/14
SET [1] 258/8	speaking [3] 200/5 200/10 220/13	Sustained [2] 252/5 253/6
several [1] 252/9	specific [1] 200/4	sworn [2] 226/6 256/14
shattered [2] 196/6 191/7	specifically [2] 200/9 232/2	T
shattering [1] 231/5	speculate [1] 239/17	TAGGART [2] 176/22 177/12
she [27] 185/20 186/11 189/2 189/23 195/10 197/20 198/5 198/7 198/10 217/5 219/3 219/13 220/14 221/21 221/22 221/22 228/25 229/1 229/1 229/2 229/10 235/25 239/2 240/10 245/7 252/7 253/15	speculation [3] 187/14 215/8 251/16	take [11] 178/23 180/12 180/25 182/10 182/20 183/7 191/10 210/3 213/9 214/10 226/1
she's [2] 197/22 219/10	spoke [8] 182/10 183/6 197/12 198/7 198/9 198/12 212/5 220/6	taken [7] 193/1 193/5 193/7 193/12 214/13 221/14 258/4
sheet [1] 224/3	spoken [3] 183/7 183/18 195/23	taking [2] 211/19 218/10
shield [7] 190/13 190/23 191/10 191/11 191/15 191/17 196/16	standards [1] 180/3	talk [5] 204/20 220/14 222/8 228/23 236/25
shift [2] 201/13 213/4	standing [2] 205/23 208/21	talked [3] 193/18 214/6 241/25
shifting [1] 210/6	start [3] 178/2 181/20 214/1	talking [3] 198/8 237/5 243/23
shoot [1] 230/22	started [6] 184/9 186/2 201/13 204/16 228/6 229/2	TARA [2] 176/21 177/18
shooting [7] 206/15 208/10 221/6 223/21 229/21 230/18 231/18	starters [1] 183/6	taxi [5] 215/1 224/4 224/23 228/16 229/1
SHORE [1] 258/15	state [5] 189/18 195/5 202/18 258/3 258/16	taxicab [1] 230/16
Short [1] 247/10	stated [6] 189/14 189/18 192/14 192/18 192/20 217/18	team [3] 182/14 182/15 222/2
shortly [1] 211/11	statement [39] 183/11 190/5 195/13 195/16 196/7 197/21 197/21 199/9 199/20 200/3 202/17 210/11 211/10 211/19 212/16 213/22 213/23 214/1 215/21 217/25 218/11 218/14 218/15 218/20 219/23 220/21 221/14 222/11 222/12 224/21 224/21 226/10 226/10 226/15 230/1 230/7 238/25 254/15 254/17	tell [10] 192/12 192/25 200/9 203/3 205/20 207/3 207/10 208/6 238/13 244/22
shot [2] 184/18 231/13	statements [12] 191/2 197/7 200/10 201/24 207/18 207/24 208/3 212/19 216/22 226/11 226/13 226/19	telling [3] 198/22 199/16 220/6
shotguns [1] 243/21	Station [1] 202/15	ten [1] 214/10
shots [1] 208/23	status [1] 248/7	ten-minute [1] 214/10
should [3] 186/24 186/25 238/9	stayed [1] 230/10	terms [1] 188/22
showing [2] 193/22 228/13	step [1] 180/9	terms [1] 241/20
side [1] 190/9	stepped [1] 186/25	testified [4] 223/16 225/1 234/20 245/8
side [15] 185/9 185/10 185/11 189/10 189/19 191/6 195/3 195/4 203/16 207/11 207/11 228/11 229/6 231/21 249/12	steps [1] 245/23	testifying [1] 214/16
side-view [1] 229/6	Stiglitz [2] 258/2 258/13	testimony [9] 192/1 222/1 223/4 225/10 225/16 241/10 252/6 253/25 258/4
sides [1] 231/3	still [6] 181/20 185/17 199/18 205/4 209/24 214/16	them [5] 184/24 207/21 210/21 223/16 252/22
silent [3] 204/24 205/1 205/12	slap [4] 203/6 213/25 230/20 230/24	Thank [3] 214/18 241/5 256/5
simply [4] 190/10 194/7 248/18 256/3	slapped [6] 196/8 204/2 205/1 231/18 249/16 250/16	Thanks [1] 181/3
situation [5] 179/9 183/25 186/12 228/20 246/3	slay [7] 216/6 218/3 218/23 219/22 220/22 220/23 221/10	that [358]
situations [2] 186/14 246/21	straight [1] 194/7	that's [38] 180/1 182/12 183/11 183/16 184/21 184/22 184/23 186/17 189/4 189/14 190/3 192/5 195/8 196/12 200/23 201/16 202/6 202/13 203/13 203/17 203/22 204/3 204/24 205/24 206/18 208/16 209/1 209/3 211/6 215/15 216/16 222/6 222/12 227/9 237/10 242/17 244/3 247/3
sk [1] 240/8	street [12] 195/3 195/4 203/13 205/23 208/21 224/13 224/15 224/17 247/8 247/19 250/2 250/15	their [18] 197/7 199/4 199/13 199/16 207/17 216/22 217/19 222/3 225/4 233/15 233/17 242/4 242/6 242/19 242/23 246/20 248/7 254/13
slight [4] 205/7 205/16 215/18	strikes [1] 179/15	them [20] 181/11 186/16 186/19 193/18 195/11 198/22 199/2 201/22 203/4 205/13 208/1 212/5 220/16 226/20 228/13 229/16 230/8 250/17 250/17 254/12
slightly [1] 205/5	struggling [1] 200/14	them [32] 182/17 183/2 184/11 185/24 194/19 194/20 195/19 196/2 196/10 197/12 201/22 202/9 202/12 203/12 203/13 204/13 206/1 208/12 208/22 209/11 213/20 214/10 225/7 230/20 230/25 231/7 231/11 231/19 236/4 240/19 253/12 254/5
smash [1] 230/4	STUDEART [2] 175/16 176/3	theory [1] 240/16
smeared [3] 189/10 208/16 209/12	stuff [1] 179/2	there [68] 178/16 179/4 183/5 186/19 187/14 189/7 189/8 190/8 190/10 190/19 191/1 193/15 193/17 194/14 194/15 195/2 195/5 196/8 196/23 198/23 199/17 200/6 201/14 205/6 207/19 207/24 208/2 213/25 215/18 216/8 216/19 217/18 217/20 217/20 220/15 220/16 220/21 222/1 223/19 224/10 224/13 224/14 224/17 224/20 225/3 226/11 226/14 228/5 229/16 229/23 230/6 230/23 236/17 236/22 237/11 237/13 238/7 241/22 242/10 244/15 245/10 247/5 247/16 251/2 252/7 252/9 253/10 253/25
smiles [1] 231/4	Subdivision [3] 233/10 242/21 242/24	there's [2] 186/19 207/8
Smith [3] 232/10 233/18 237/19	subjective [1] 190/10	thereafter [1] 196/15
so [50] 178/1 179/8 180/21 182/10 183/1 184/14 185/12 185/15 185/25 186/1 186/24 188/9 190/1 190/13 193/4 193/23 194/10 194/19 197/8 197/24 198/2 199/16 200/13 201/11 202/17 203/25 204/1 204/5 204/8 207/19 208/2 208/9 208/20 209/21 209/23 210/11 213/25 214/23 219/14 221/18 223/25 225/6 226/4 230/7 234/19 236/15 245/15 247/24 248/16 253/17	submissions [1] 255/3	these [4] 233/6 237/3 241/20 243/23
some [14] 191/1 191/2 192/6 193/15 193/18 196/15 196/18 214/22 222/1 223/1 223/2 225/9 232/8 237/11	Subscribed [1] 256/14	
somebody [17] 182/14 182/15 182/15 186/19 194/11 212/1 213/7 213/16 218/18 220/13 229/24 240/5 244/7 246/22 247/8 248/16 250/14	substance [1] 227/19	
somebody's [1] 187/5	Suffolk [18] 182/16 211/19 211/22 215/14 215/22 215/23 216/5 216/20 216/21 218/1 218/9 218/12 218/21 219/20 219/24 220/6 221/2 224/1	
somehow [3] 218/12 244/16 250/1	suggesting [1] 190/8	
someone [1] 244/17	SUITE [1] 176/15	
something [6] 181/24 211/19 223/19 231/11 240/12 251/21	support [1] 220/23	
Something [1] 201/20	supposed [5] 236/5 246/19 246/25 246/25 247/12	
soon [1] 221/18	supposedly [1] 210/24	
sorry [4] 183/9 221/1 234/2 253/8	sore [12] 180/3 182/6 196/23 198/11 200/6 200/19 204/21 209/23 217/7 230/2 241/17 241/22	
sound [1] 205/8	spect [6] 215/24 215/25 218/22 219/4 254/4 255/6	
	suspects [1] 218/19	

<p>T</p> <p>they [63] 186/18 187/18 188/18 188/20 196/23 197/8 197/9 198/23 198/24 199/3 199/6 199/10 199/12 199/17 199/18 205/14 207/8 207/10 207/13 207/14 207/16 207/21 207/25 208/19 211/25 212/3 212/3 212/3 212/5 212/12 212/16 216/3 216/4 216/23 217/25 218/14 218/23 219/22 219/23 220/25 221/1 221/4 221/5 221/6 221/7 221/8 221/10 221/11 222/3 222/3 222/4 228/9 228/24 228/24 236/4 238/10 243/20 243/20 244/22 248/7 248/24 248/25 252/8</p> <p>they're [9] 183/23 186/21 188/16 195/3 205/12 205/14 218/10 218/11 229/11</p> <p>thing [3] 209/9 214/24 250/5</p> <p>things [10] 182/4 183/23 184/5 193/15 193/16 242/10 243/6 243/23 245/11 246/24</p> <p>think [20] 178/18 181/7 190/5 190/18 191/1 193/16 206/20 210/20 210/22 213/5 220/5 222/6 222/7 223/23 223/24 244/7 250/18 250/20 251/11 251/12</p> <p>thinks [2] 189/2 227/21</p> <p>THURD [1] 176/23</p> <p>this [76] 177/1 178/15 179/7 181/1 181/7 181/25 182/1 182/11 182/21 183/2 184/2 185/2 186/1 187/15 187/15 190/21 192/1 193/19 194/13 194/14 195/7 197/1 197/22 199/22 200/13 210/16 210/18 211/10 214/1 216/25 221/24 223/5 224/8 228/21 229/1 229/9 229/13 229/23 231/9 231/12 231/22 232/12 232/20 233/22 234/5 235/2 235/10 235/13 235/19 236/25 237/17 237/18 237/12 237/14 237/19 238/23 241/12 241/25 242/7 243/4 243/9 243/23 244/3 244/8 245/2 245/15 246/18 247/20 248/10 250/1 250/12 250/15 251/19 252/21 256/15 258/8</p> <p>Thomas [1] 225/11</p> <p>those [10] 179/19 181/10 191/2 200/8 211/16 212/14 225/7 226/12 227/2 240/25</p> <p>though [2] 205/16 230/23</p> <p>thought [5] 185/17 219/2 227/20 253/8 253/13</p> <p>threat [9] 196/9 229/19 229/23 229/25 230/7 246/23 247/5 247/16 247/11</p> <p>three [2] 208/22 240/8</p> <p>through [7] 182/5 199/4 199/13 200/13 229/6 245/23 258/6</p> <p>time [37] 180/10 183/2 183/17 185/24 189/9 190/4 190/12 194/6 196/4 197/13 199/22 202/12 204/5 204/7 208/16 211/3 212/11 215/23 216/3 216/4 216/8 216/19 220/25 223/1 223/11 223/13 223/14 223/23 228/21 232/12 241/14 242/16 247/17 247/13 247/25 249/7 252/21</p> <p>times [4] 184/1 197/10 231/7 234/14</p> <p>today [4] 178/8 180/15 252/22 254/21</p> <p>told [25] 178/22 187/25 188/3 189/12 189/15 190/16 191/22 192/15 193/5 193/7 193/12 196/25 197/13 197/20 198/13 198/15 202/20 209/13 212/3 230/1 231/1 239/9 240/16 254/8 254/12</p> <p>Tom [2] 225/21 232/6</p> <p>too [1] 243/18</p> <p>took [13] 183/11 185/3 185/10 191/14 192/17 193/17 196/16 211/11 217/25 218/14 219/22 219/23 225/10</p> <p>touched [1] 222/7</p> <p>toward [7] 187/20 204/16 205/22 208/21 210/1 229/22 230/7</p> <p>towards [4] 188/6 195/19 199/24 229/24</p> <p>traffic [2] 195/5 201/14</p> <p>train [1] 236/4</p>	<p>trained [6] 186/13 186/15 186/21 234/8 234/13 248/6</p> <p>training [6] 186/17 234/11 234/14 234/16 235/7 241/19</p> <p>transcription [1] 258/7</p> <p>travel [7] 205/25 206/2 206/3 207/1 230/17 249/15 250/16</p> <p>tried [4] 187/1 203/6 212/9 231/13</p> <p>trouble [1] 210/6</p> <p>true [15] 189/11 192/5 200/8 200/23 201/9 201/16 202/1 203/14 203/17 205/24 212/13 212/14 212/24 213/22 225/1</p> <p>TRUSTEE [1] 176/23</p> <p>truth [1] 220/6</p> <p>try [3] 197/10 198/2 254/8</p> <p>trying [21] 183/2 186/16 187/2 187/5 187/6 189/12 189/16 190/1 190/4 190/9 190/18 190/23 195/14 197/1 199/23 214/22 222/16 248/24 248/25 251/17 254/8</p> <p>turn [9] 194/21 194/22 194/24 195/14 195/20 222/24 228/25 230/14 254/9</p> <p>twice [1] 234/14</p> <p>two [8] 203/16 205/11 211/14 225/12 225/12 229/16 234/14 255/7</p> <p>type [2] 179/2 226/4</p> <p>U</p> <p>u-turn [9] 194/21 194/22 194/24 195/14 195/20 222/24 228/25 230/14 254/9</p> <p>ultimately [1] 233/5</p> <p>uncommon [1] 183/22</p> <p>under [8] 181/20 200/17 209/18 214/16 219/4 219/8 231/10 238/10</p> <p>understand [4] 179/21 225/17 229/24 246/6</p> <p>understanding [7] 222/22 222/23 225/21 237/18 245/9 246/13 246/13</p> <p>understood [1] 216/19</p> <p>unfamiliar [1] 193/25</p> <p>unfolded [1] 228/5</p> <p>uniform [4] 233/4 233/16 242/5 243/9</p> <p>Uniforms [1] 243/6</p> <p>unit [2] 235/7 240/6</p> <p>unknowful [1] 190/3</p> <p>unless [3] 218/11 240/13 240/13</p> <p>unlock [1] 231/5</p> <p>unobstructed [1] 185/16</p> <p>unquote [1] 210/18</p> <p>until [1] 191/6</p> <p>up [49] 178/11 180/12 180/25 181/10 182/1 185/24 186/10 190/10 190/25 193/22 194/10 194/14 194/19 194/20 195/18 195/25 202/9 202/19 203/20 204/14 206/9 206/13 206/15 206/19 206/24 207/1 207/3 207/9 209/11 212/11 212/22 212/25 213/17 223/15 224/5 227/24 228/13 229/1 229/5 229/20 230/13 232/13 237/17 247/17 247/20 249/15 249/25 250/22 250/23</p> <p>upon [3] 207/5 210/14 228/13</p> <p>us [4] 195/24 207/10 235/4 251/17</p> <p>use [14] 188/17 188/21 189/23 188/24 233/14 233/17 235/23 236/8 237/20 237/25 238/9 242/3 242/6 242/19</p> <p>used [3] 189/3 242/19 252/18</p> <p>utter [2] 215/8 240/14</p> <p>V</p> <p>vehicle [24] 185/22 186/6 187/19 192/16 194/11 194/18 205/1 205/6 208/18 224/5 228/7 228/15 228/17 228/19 229/1 229/7 229/13 229/14 229/15 230/16 230/18 230/20 230/24 231/16</p> <p>vehicles [1] 206/4</p> <p>verbal [4] 228/13 228/16 229/2 250/21</p>	<p>verified [1] 201/11</p> <p>verify [1] 201/2</p> <p>version [8] 216/5 218/2 218/22 219/22 220/22 220/23 221/10 227/5</p> <p>versions [1] 216/22</p> <p>versus [1] 234/20</p> <p>victim [8] 210/19 210/24 211/1 211/4 211/6 211/8 215/24 218/22</p> <p>victims [1] 218/19</p> <p>view [5] 185/16 207/11 220/17 224/12 229/6</p> <p>violated [1] 241/23</p> <p>violating [2] 233/6 243/1</p> <p>violent [4] 183/20 183/24 246/3 246/20</p> <p>virtue [1] 235/10</p> <p>vision [1] 224/11</p> <p>W</p> <p>waive [1] 212/4</p> <p>walk [2] 229/24 230/6</p> <p>walking [4] 204/16 229/22 230/8 230/16</p> <p>want [12] 182/5 183/5 191/25 199/21 206/22 210/15 213/14 215/1 223/1 241/4 243/22 247/3</p> <p>wanted [7] 178/3 192/4 194/6 200/5 214/25 236/10 238/5</p> <p>was [228]</p> <p>wasn't [10] 194/11 195/2 201/15 209/23 223/17 227/18 244/20 245/18 247/13 252/10</p> <p>watching [1] 223/5</p> <p>way [6] 195/6 202/3 213/4 214/6 240/25 243/22</p> <p>we [35] 177/2 178/2 179/22 180/11 181/10 181/20 186/13 190/2 193/15 193/25 195/24 196/25 200/13 206/9 206/13 206/23 206/24 207/19 209/14 214/5 214/6 214/6 214/10 214/14 216/13 219/2 227/21 235/23 237/4 237/8 239/16 241/25 254/20 254/21 254/22</p> <p>we'll [1] 183/3</p> <p>we're [5] 178/7 181/1 216/15 227/23 227/24</p> <p>weapon [26] 192/10 192/13 192/15 192/20 196/9 196/13 230/2 230/23 231/4 232/9 233/24 234/5 234/9 234/12 234/15 234/18 234/19 234/20 236/7 235/13 235/21 237/22 242/7 244/4 244/8 245/16</p> <p>weapons [11] 234/6 235/2 235/3 235/9 236/10 236/18 236/19 236/23 238/3 238/6 238/9</p> <p>week [1] 201/9</p> <p>weight [1] 239/21</p> <p>well [17] 177/23 187/17 187/24 189/12 192/6 197/22 199/12 203/3 205/11 211/5 213/7 237/3 239/23 242/14 242/17 246/15 254/3</p> <p>went [12] 184/11 194/19 196/7 196/25 203/9 203/25 209/24 210/1 212/12 224/8 229/9 245/23</p> <p>were [56] 194/14 194/15 198/13 198/15 198/22 198/24 199/3 199/12 199/17 199/18 200/8 201/25 206/4 207/24 207/25 208/17 208/19 209/14 211/25 214/25 215/4 215/19 216/3 216/4 217/18 217/20 217/20 218/12 219/5 219/9 222/25 223/3 223/14 224/7 224/13 224/20 224/20 225/3 225/9 225/11 225/16 225/18 225/20 226/2 226/4 226/8 226/9 226/10 226/14 227/2 228/10 228/24 228/24 232/8 251/22 252/8</p> <p>weren't [2] 196/23 199/6</p> <p>Wesson [3] 232/10 233/18 237/19</p> <p>west [3] 202/15 203/12 203/12</p> <p>westbound [1] 202/14</p> <p>what [73] 177/24 186/24 187/9 189/4 189/14 189/20 190/3 190/7 191/21 195/8 196/20 197/8 197/9 200/4 206/1 206/20 207/20 208/14 209/1 209/3 211/3 212/6 212/8</p>
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<p>W</p> <p>what... [50] 213/12 213/20 215/15 216/11 217/12 217/15 217/23 217/24 218/5 218/8 219/18 228/9 229/11 221/4 221/13 221/13 221/15 223/4 225/17 226/4 226/24 227/4 227/5 227/8 227/16 227/21 228/4 229/10 232/24 233/2 233/9 234/23 236/6 236/15 238/25 239/25 240/23 244/3 244/5 244/5 244/6 245/8 246/10 248/2 248/24 251/4 251/11 251/11 254/2 254/22 what's [2] 218/14 222/21 whatever [2] 184/14 199/28 when [43] 180/11 181/1 185/20 186/15 189/10 191/2 191/3 191/10 192/18 196/8 196/12 198/12 285/1 285/2 285/6 288/12 288/15 288/16 210/1 211/2 212/21 215/5 215/16 216/8 216/19 218/10 220/6 228/12 221/20 223/2 224/8 225/11 225/16 225/20 226/1 228/2 229/13 231/18 241/14 242/22 244/25 246/3 248/6 where [23] 183/14 183/16 185/2 202/19 202/19 206/4 206/9 206/10 206/13 206/24 207/5 207/9 207/10 212/12 223/5 228/7 238/2 244/7 244/15 246/22 247/15 250/8 254/12 WHEREOF [1] 258/8 Whereupon [2] 214/12 256/8 whether [13] 186/5 190/2 190/2 196/20 200/7 204/22 205/3 210/12 213/3 214/2 252/12 252/19 253/15 which [16] 178/9 180/6 180/7 200/10 206/16 210/14 216/14 224/14 228/6 228/17 228/19 230/16 231/1 235/3 235/3 254/2 while [2] 189/19 213/13 white [13] 185/12 200/22 202/9 202/24 203/3 203/20 203/21 204/1 204/3 204/14 204/15 205/23 208/22 who [30] 183/19 186/10 192/25 197/13 197/15 197/16 198/11 198/23 203/21 204/2 205/23 208/21 210/18 229/4 231/16 235/19 240/5 241/12 246/23 246/23 246/24 247/8 247/20 248/17 250/16 250/17 252/9 252/10 254/8 254/12 whoever [1] 198/20 whole [1] 231/22 whose [3] 216/22 218/22 221/10 why [18] 194/24 195/1 214/9 216/1 219/6 219/6 219/12 219/16 219/20 219/24 222/22 229/24 232/2 238/21 239/9 239/13 240/12 240/16 wife [3] 229/10 250/11 250/11 will [11] 177/24 179/6 180/24 213/16 228/1 239/20 254/20 254/21 255/4 255/6 256/2 WILLIAM [2] 176/23 177/17 window [17] 184/12 185/1 185/2 189/10 189/19 190/6 191/7 191/7 203/19 207/11 208/16 209/12 209/12 231/4 231/5 250/22 250/23 windows [1] 229/5 withdraw [2] 178/4 222/9 within [2] 237/4 237/5 without [4] 195/1 195/22 221/23 256/3 witness [16] 178/3 181/5 181/7 186/1 197/22 197/24 208/3 216/14 217/1 219/11 230/18 232/22 239/17 240/1 251/19 258/8 witnessed [1] 183/19 witnesses [11] 182/11 183/22 191/21 191/23 191/24 207/18 212/10 221/7 253/3 255/6 256/3 won't [1] 255/5 word [6] 188/23 204/24 218/3 234/6 235/23 252/17</p>	<p>work [2] 178/21 240/14 working [2] 200/25 201/8 works [1] 179/10 would [31] 178/9 178/23 179/18 185/13 185/25 186/11 187/7 187/9 188/9 197/14 197/18 197/20 200/9 206/16 213/7 229/24 230/6 232/21 236/15 236/20 236/24 238/6 238/21 240/3 242/15 244/16 250/4 250/8 250/14 250/20 251/12 wouldn't [2] 213/9 251/13 written [3] 200/14 211/10 218/20 wrong [10] 183/23 184/5 200/14 208/6 210/23 211/19 253/12 253/15 254/4 254/5 wrote [1] 212/6 Y Yeah [1] 178/1 yelled [2] 203/20 204/15 yelling [5] 203/24 204/14 231/10 249/16 250/2 yes [181] yesterday [5] 193/18 203/22 237/8 241/10 241/25 yet [2] 180/15 255/5 YORK [8] 175/2 175/9 176/8 176/16 202/13 228/6 258/4 258/16 you [240] you'll [1] 180/21 you're [7] 187/22 190/8 191/20 191/24 200/4 200/10 204/22 you're [2] 195/23 213/9 your [37] 178/20 180/15 182/14 182/18 182/23 183/1 190/21 191/20 198/16 206/22 210/3 211/6 212/17 213/10 215/2 215/2 215/3 218/24 219/18 219/20 222/22 225/11 225/17 227/9 227/16 231/23 234/1 237/7 237/18 238/18 239/12 239/19 239/23 240/20 241/10 244/5 253/18 yourself [1] 213/10</p>
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DISTLER

259

1 - - - - - X

2 IN THE MATTER OF THE CLAIM OF
3 POLICE DEPARTMENT
4 COUNTY OF NASSAU, NEW YORK

COPY

5
6 CLAIMANT,

7 CASE NO. 8118
8 CHARGES SPECIFICATION

9 AGAINST

10 ANTHONY DILEONARDO

11 POLICE OFFICER, SERIAL NO. 9013

12 RESPONDENT.

13 - - - - - X

14 NASSAU COUNTY POLICE DEPARTMENT HEADQUARTERS

15 1490 FRANKLIN AVENUE

16 MINEOLA, NEW YORK 11501

17 MARCH 19, 2014

18 10:00 A.M.

19

20

21 CONTINUANCE

22 INSPECTOR MICHAEL STUDDERT, HEARING OFFICER

23

24

25

DISTLER

260

1 A P P E A R A N C E S :

2

3 POLICE DEPARTMENT ATTORNEY

4 ATTORNEY OR THE CLAIMANTS

5 1490 FRANKLIN AVENUE

6 MINEOLA, NEW YORK 11501

7 BY: LESLI HILLER ESQ.

8

9 BARKET MARION EPSTEIN & KEARON, LLP

10 ATTORNEYS FOR THE RESPONDENTS

11 666 OLD COUNTRY ROAD

12 GARDEN CITY, NEW YORK 11530

13 BY: BRUCE BARKET ESQ.

14

15 ALSO PRESENT:

16

17 SERGEANT ISRAEL SANTIAGO COMMANDING OFFICER,

18 LEGAL BUREAU

19 DETECTIVE CHRISTOPHER F. BELLISTRI,

20 LEGAL BUREAU

21 KAREN TAGGART ESQ. POLICE DEPARTMENT ATTORNEY,

22 LEGAL BUREAU

23 PSA JOANNE DELORENZO, LEGAL BUREAU

24

25

NORTH SHORE COURT REPORTERS 1-800-794-5342

DISTLER

261

1 HEARING OFFICER STUDDERT: This hearing
2 is now in session. Let the record reflect that
3 Officer Dileonardo's PBA Rep was given ample
4 time to appear.

5 He had prior notice of the hearing and
6 everyone was present at 10:00 and it is now
7 11:10 and he still did not come. We're going to
8 continue. Officer Dileonardo is present here
9 with his attorney.

10 For the record, we're just going to go
11 around and state who's here.

12 MS. HILLER: Lesli Hiller for the
13 Nassau County Police Department Legal Bureau.

14 MR. SANTIAGO: Detective Sergeant
15 Israel Santiago, Commanding Officer of Legal
16 Bureau.

17 MR. BELLISTRI: Detective Christopher
18 Bellistri, Legal Bureau.

19 MS. DELORENZO: Joanne Delorenzo, Legal
20 Bureau.

21 MS. TAGGART: Karen Taggart, Legal
22 Bureau.

23 MR. BARKET: Bruce Barket, I'm tempted
24 to say Legal Bureau, but I'm here for Officer
25 Dileonardo.

DISTLER

262

1 I would just like to point out that I
2 thought that we received a phone call from the
3 PBA Representative who had an emergency with
4 his daughter and is expected to be here within
5 a half an hour, 45 minutes of when he called
6 about a half hour ago.

7 HEARING OFFICER STUDDERT: Off the
8 record.

9 (Whereupon, a discussion was held off
10 the record.)

11 HEARING OFFICER STUDDERT: Let the
12 record reflect that Officer Percell is present.

13 Just state your full name for the
14 record, please.

15 MR. PURCELL: William Purcell,
16 P-U-R-C-E-L-L.

17 HEARING OFFICER STUDDERT: He's a PBA
18 Representative for Officer Dileonardo.

19 I just want everyone to remember that
20 this is an administrative hearing. This is not
21 a criminal trial nor a civil trial and this is
22 a normal course of the meeting.

23 Where are we at now with the hearing?

24 MS. HILLER: I just want to put on the
25 record, that at this point my understanding is

DISTLER

263

1 that, Mr. Barket would like to recall Detective
2 Sergeant Distler, who is still on my case, I
3 guess, I think we're probably on somewhere in
4 re-recross or something to that effect.

5 MR. BARKET: I don't know the matter of
6 how we characterize it, but I have a few
7 questions.

8 HEARING OFFICER STUDDERT: Call in
9 Sergeant Distler, please.

10 Okay. Sergeant Distler, you're still
11 under oath and Mr. Barket is going to have some
12 more questions.

13 EXAMINATION BY MR. BARKET:

14 Q. Good morning.

15 A. Good morning.

16 Q. I just have a couple of questions
17 about your experience. I forget, how long were
18 you a police officer?

19 A. 28 years, almost 29.

20 Q. And you spent the last three and a
21 half in Internal Affairs?

22 A. October of 2010.

23 Q. And where were you assigned before
24 that?

25 A. Chief of Patrol's Office.

DISTLER

264

1 Q. What role did you have there?

2 A. I was the Sergeant. I worked
3 underneath four Chiefs and basically whatever
4 they needed done.

5 Q. How long did you hold that position?

6 A. Three years.

7 Q. I take it, that was a job here in
8 Headquarters?

9 A. Yes.

10 Q. And you worked out of Headquarters?

11 A. Yes.

12 Q. Did you conduct investigations, field
13 interviews, patrols, during that time?

14 A. No, field interviews; investigations,
15 minimally.

16 Q. How about before that?

17 A. From 1995 until 2007, I worked at the
18 Court Liaison Office.

19 Q. Did you work in the courthouse?

20 A. Yes.

21 Q. Brings back memories, but you were the
22 person- You actually worked at the County Court
23 or District Court?

24 A. District Court.

25 Q. So you were in charge of making sure

DISTLER

265

1 officers showed up to testify?

2 A. Amongst other things, there were many
3 duties. That was one of the duties.

4 Q. And you worked in the courthouse
5 everyday, I take it?

6 A. Yes.

7 Q. So there were no field interviews, no
8 patrols, no investigations; you dealt with the
9 DA's office and the police department?

10 A. For the most part, yes.

11 Q. And trying to get back 28 years, you
12 have another eight years or so before that,
13 where did you work before that?

14 A. I started out my career in the
15 1st Precinct. I worked for a period in the
16 Narcotics Bureau and I worked in the Community
17 Projects Bureau for a year.

18 Q. Community what?

19 A. Community Projects Bureau.

20 Q. So you were a police officer in the
21 1st Precinct?

22 A. Yes.

23 Q. And when did you start?

24 A. 1985.

25 Q. And you said that you worked in

DISTLER

266

1 Narcotics?

2 A. Yes.

3 Q. For how long did you work in
4 Narcotics?

5 A. About nine months.

6 Q. In an investigative capacity,
7 undercover capacity; what did you do for
8 Narcotics?

9 A. Both; undercover, investigative.

10 Q. And that was, I guess, between 1985
11 and when?

12 A. 1987.

13 Q. Okay. And then you worked in the
14 Community Projects, what was that?

15 A. Community Projects, I did what we
16 called at the time, the PRIDE Program, which
17 was like the DARE Program, where we would go
18 into the schools.

19 Q. Did that have an investigative
20 component to it or community relations?

21 A. No, community relations.

22 Q. I guess that's two years, so for the
23 other eight years or so you were on patrol in
24 the 1st Precinct.

25 A. Yes.

DISTLER

267

1 Q. And when were you promoted to
2 Detective Sergeant?

3 A. In April of 2011. That's a
4 designation.

5 Q. It's a designation, in other words,
6 explain the difference between designation--

7 A. I got promoted to Sergeant in 1995 and
8 when the detective is not a promotional exam
9 it's a designation, you get designated
10 Detective.

11 Q. In the course of your career, how many
12 police shootings have you investigated?

13 A. On what level?

14 Q. Where you were the lead or co-lead
15 investigator of a shooting that involved a
16 police officer firing his weapon?

17 A. I didn't investigate this incident as
18 a police shooting.

19 Q. I didn't ask that?

20 A. Okay.

21 Q. How many police shootings have you
22 investigated?

23 A. As the lead investigator?

24 Q. Yes.

25 A. None.

DISTLER

268

1 Q. Do you have any specialized training
2 in the use of deadly force by police officers
3 other than at the academy?

4 A. No.

5 MR. BARKET: I don't have any further
6 questions.

7 HEARING OFFICER STUDDERT: Ms. Hiller,
8 do you have anything?

9 MS. HILLER: Yes, please. I have just a
10 couple with respect to Bruce's questions.

11 EXAMINATION BY MS. HILLER:

12 Q. You testified a few minutes ago that
13 you were the Chief of Patrol.

14 You were there for how many years, three?

15 A. Approximately three years.

16 Q. What commands does Chief of Patrol
17 supervise or oversee?

18 A. All the precincts, Bureau of Special
19 Operations, Highway Patrol, Emergency Ambulance
20 Bureau. There's probably a few that I'm not-
21 That I'm missing.

22 Q. Is Highway one of them?

23 A. Highway is one.

24 Q. Is Tactical Services one of them?

25 A. It's called Tactical Services now, it

DISTLER

269

1 was Bureau of Special Operations then.

2 Emergency services is a part of Highway.

3 I'm not even sure where they fit on the
4 organizational chart right now, but at the time
5 they were a part of Highway.

6 Q. So they oversee multiple units?

7 A. Yes.

8 Q. With respect to the incident on
9 February 27, 2011, were you assigned to
10 investigate the shooting?

11 A. No.

12 Q. What were you assigned to do?

13 A. To investigate the officers for any
14 violations of the rules and regulations.

15 Q. Okay. I have no further questions.

16 HEARING OFFICER STUDDERT: Did you want
17 to recross?

18 MR. BARKET: No.

19 HEARING OFFICER STUDDERT: Okay. The
20 witness is excused. Call your next witness.

21 MR. BARKET: I'm going to move strike
22 all of the opinion testimony from Detective
23 Sergeant Distler. She has no experience or
24 expertise to offer an opinion in any capacity.

25 All of that opinion testimony is utter

DISTLER

270

1 speculation. We just as easily could have
2 called in someone from off the street and asked
3 them what they thought, and that individual's
4 opinion would be just as valuable as hers.

5 To have that on the record, I think,
6 transforms whatever this proceeding is into
7 something that is significantly less than the
8 due process of Officer Dileonardo and should be
9 avoided.

10 HEARING OFFICER STUDDERT: Okay. I deny
11 your motion. I'll give it the weight it's due.

12 MR. BARKET: Then, I'm going to ask for
13 an opportunity to call an expert ourselves who
14 has actually investigated police shootings and
15 is trained on the proper use of deadly physical
16 force by police officers.

17 Once the hearing began, I realized
18 that we weren't going to just deal with the
19 facts and argue from there that Officer, excuse
20 me, Detective Sergeant Distler's opinion was
21 going to be taken into account.

22 I began to look at the calling of an
23 expert ourselves to review the matter and to
24 testify.

25 There are several experts that our

DISTLER

271

1 office have used on other matters and we made
2 contact with the union to see if the union
3 would pay for that.

4 I'm told that they want a definitive
5 number and it is possible they will pay for it,
6 so I'm going to ask for a reasonable
7 adjournment to call an expert to testify about
8 this.

9 HEARING OFFICER STUDDERT: I'm going to
10 deny your request. You've had ample time to
11 bring in a witness here.

12 I've actually heard enough where I can
13 make a decision regarding whether Officer
14 Dileonardo violated the rules and regulations
15 of the Nassau County Police Department.

16 MR. BARKET: Okay. I would think that
17 you would take an exception to that.

18 No disrespect to you, Inspector, but
19 you've allowed opinion testimony from somebody
20 who is obviously not an expert and you're
21 prohibiting us from calling an expert.

22 HEARING OFFICER STUDDERT: The record
23 is noted with your objection.

24 MR. BARKET: Okay. We don't have any
25 other witnesses.

DISTLER

272

1 HEARING OFFICER STUDDERT: Excuse me.

2 (Whereupon, a discussion was held off
3 the record.)

4 HEARING OFFICER STUDDERT: No more
5 witnesses on either side?

6 MS. HILLER: No.

7 HEARING OFFICER STUDDERT: Okay. With
8 this no additional witnesses being called at
9 this time, I'm directing that both parties
10 provide me with any additional submissions by
11 Wednesday, March 26.

12 When you do, please provide the
13 closing Counsel with copies of anything that is
14 provided.

15 Any additional briefs that you might
16 want to submit, needs to be exchanged
17 simultaneously between the parties on
18 Wednesday, April 2nd and to me.

19 Who should they submit those through?

20 MR. SANTIAGO: To the Legal Bureau.

21 MS. HILLER: So just to be clear, I'm
22 not really certain on what your March 26 date
23 is for, Inspector.

24 HEARING OFFICER STUDDERT: If there's
25 any additional briefs that you might want to

DISTLER

273

1 submit that you want me to consider in reaching
2 my decision.

3 MS. HILLER: Would it be easier if
4 those submissions were made as an attachment to
5 our briefs or- I'm not really--

6 MR. BARKET: My sense is--

7 HEARING OFFICER STUDDERT: Yeah, those
8 would come in first and then, your briefs would
9 be separate and you have ten days for those.

10 MR. BARKET: If we submit something,
11 we're going to want to change that first and
12 then have a week after that.

13 The only thing is that, that schedule
14 is fine, provided that we have a transcript for
15 the proceedings prior with enough time in
16 advance to review them, sign to them, and
17 prepare them with the briefs.

18 If we're not going to get the minutes
19 until April 1st then I'm not going to be able
20 to prepare a written submission by April 2nd.

21 HEARING OFFICER STUDDERT: What do you
22 have to say?

23 MS. HILLER: I would like the benefit
24 of the brief out of the transcript as well.

25 I don't know if we can get a time

DISTLER

274

1 frame of when the transcripts are available
2 from the Court Reporter. Is that possible?

3 (Whereupon, a discussion was held off
4 the record.)

5 HEARING OFFICER STUDDERT: We're going
6 to go back on the record at this point.

7 After clarifying that we're going to
8 stay with the additional submissions by next
9 Wednesday, which is the 26, for additional
10 submissions.

11 The briefs, they will be due ten days
12 after the transcripts are available to you.

13 MR. BARKET: So no earlier than April
14 2nd?

15 HEARING OFFICER STUDDERT: Correct.

16 MR. BARKET: Okay.

17 HEARING OFFICER STUDDERT: Now, before
18 we go on, does anyone have anything further
19 that they want bring into the record?

20 Any closing statement that you want to
21 make, Mr. Barket?

22 MR. BARKET: No, we'll stick with the
23 written submissions.

24 HEARING OFFICER STUDDERT: Ms. Hiller?
25 (Testimony continues to include Jurat.)

DISTLER

275

1 MS. HILLER: That's fine with me.

2 HEARING OFFICER STUDDERT: We're going
3 to close this hearing for today and the hearing
4 remains open until we receive the transcript
5 and those submissions. Okay?

6 And after receiving the briefs, I will
7 review the testimony, evaluate the evidence and
8 contemplate the arguments made in your briefs,
9 thereafter, I will prepare a memo to the
10 Commissioner Police reflecting my findings and
11 any recommendations, if necessary. Okay?

12 MR. BARKET: Okay.

13 MS. HILLER: Thank you.

14 (Whereupon, the examination of the
15 witness was concluded Time noted: 11:38 a.m.)
16

17
18 SGT. JO-ANN DISTLER
19

20 SUBSCRIBED AND SWORN BEFORE ME THIS _____ DAY
21 OF _____, 2014.
22

23
24
25 Notary Public

DISTLER

276

1 I D E X P A G E

2 EXAMINATION OF SGT. JO-ANN DISTLER

3 BY MR. BARKET: PAGES 263 TO 268

4

5 EXAMINATION OF SGT. JO-ANN DISTLER

6 BY MS. HILLER: PAGES 268 TO 269

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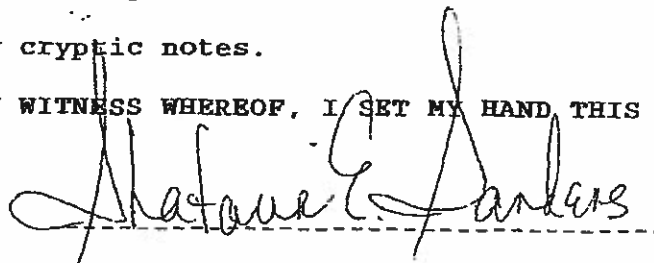
DISTLER

277

CERTIFICATE BY COURT REPORTER

I, SHATAVIA E. SANDERS, a Professional Court Reporter and Notary Public in and for the State of New York do hereby certify that the foregoing testimony taken in the matter of the claim of Police Department County of Nassau, New York against Anthony Dileonardo Police Officer, Serial No. 9013, consisting of pages 259 through 275 is an accurate transcription of my cryptic notes.

IN WITNESS WHEREOF, I SET MY HAND THIS DAY.

A handwritten signature in cursive script, reading "Shatavia E. Sanders", is written over a horizontal dashed line.

SHATAVIA E. SANDERS

PROFESSIONAL COURT REPORTER

NORTH SHORE COURT REPORTERS

NOTARY PUBLIC - STATE OF NEW YORK

DEPARTMENT		
	(263:1) (263:5) (263:11) (263:13) (268:5) (269:18) (269:21) (270:12) (271:16) (271:24) (273:6) (273:10) (274:13) (274:16) (274:21) (274:22) (275:12) (276:3) BASICALLY (264:3) BEFORE (263:23) (264:16) (265:12) (265:13) (274:17) (275:20) BEGAN (270:17) (270:22) BEING (272:8) BELLISKEY (260:19) (261:17) (261:18) BENEFIT (273:23) BETWEEN (266:10) (267:5) (272:17) BOTH (266:9) (272:9) BRIEF (273:24) BRIEFS (272:15) (272:25) (273:5) (273:8) (273:17) (274:11) (275:6) (275:8) BRING (271:11) (274:19) BRINGS (264:21) BRUCE (260:13) (261:23) BRUCE'S (268:10) BUREAU (260:18) (260:20) (260:22) (260:23) (261:13) (261:16) (261:18) (261:20) (261:22) (261:24) (265:16) (265:17) (265:19) (268:18) (268:20) (269:1) (272:20) BOY (261:24) (263:6) (264:21) (269:4) (271:18)	CITY (260:12) CIVIL (262:21) CLARK (259:2) (277:6) CLAYBART (259:5) CLAYBARTS (260:4) CLARIFYING (274:7) CLEAR (272:21) CLOSE (275:3) CLOSING (272:13) (274:20) CO-LEAD (267:14) COME (261:7) (273:8) COMMANDING (260:17) (261:15) COMMANDS (268:16) COMMISSIONER (275:10) COMMUNITY (265:16) (265:18) (265:19) (266:14) (266:15) (266:20) (266:21) COMPONENT (266:20) CONCLUDED (275:15) CONDUCT (264:12) CONSIDER (273:1) CONSISTING (277:8) CONTACT (271:2) CONTEMPLATE (275:8) CONTINUANCE (259:20) CONTINUE (261:8) CONTIGUES (274:25) COPIES (272:13) CORRECT (274:15) COULD (270:1) COUNSEL (272:13) COUNTRY (260:11) COUNTY (259:4) (259:13) (261:13) (264:22) (271:15) (277:6) COUPLE (263:16) (268:10) COURSE (262:22) (267:11) COURT (264:18) (264:22) (264:23) (264:24) (274:2) (277:1) (277:3) (277:15) (277:16) COURTHOUSE (264:19) (265:4) CRIMINAL (262:21) CRYPTIC (277:10)
A		D
ABLE (273:19) ACADEMY (268:3) ACCOUNT (270:21) ACCURATE (277:9) ACTUALLY (264:22) (270:14) (271:12) ADDITIONAL (272:8) (272:10) (272:15) (272:25) (274:8) (274:9) ADJOURNMENT (271:7) ADMINISTRATIVE ADVANCE (273:16) AFFAIRS (263:21) AFTER (273:12) (274:7) (274:12) (275:6) AGAINST (259:8) (277:7) AGO (262:6) (268:12) ALL (268:18) (269:22) (269:25) ALLOWED (271:19) ALMOST (263:19) ALSO (260:15) AMBULANCE (268:19) AMONGST (265:2) AMPLE (261:3) (271:10) ANOTHER (265:12) ANTHONY (259:9) (277:7) ANY (268:1) (268:5) (269:13) (269:24) (271:24) (272:10) (272:15) (272:25) (274:20) (275:11) ANYONE (274:18) ANYTHING (268:8) (272:13) (274:18) APPEAR (261:4) APPROXIMATELY (268:15) APRIL (267:3) (272:18) (273:19) (273:20) (274:13) ARE (262:23) (270:25) (274:1) (274:12) ARGUE (270:19) ARGUMENTS (275:8) AROUND (261:11) ASK (267:19) (270:12) (271:6) ASKED (270:2) ASSIGNED (263:23) (269:9) (269:12) ATTACHMENT (273:4) ATTORNEY (260:3) (260:4) (260:21) (261:9) ATTORNEYS (260:10) AVAILABLE (274:1) (274:12) AVENUE (259:14) (260:5) AVOIDED (270:9)	B BACK (264:21) (265:11) (274:6) BAKKE (260:9) (260:13) (261:23)	DAKE (266:17) DA'S (265:9) DATE (272:22) DAUGHTER (262:4) DAY (275:20) (277:11) DAYS (273:9) (274:11) DEADLY (268:2) (270:15) DEAL (270:18) DEALT (265:8) DECISION (273:2) DECISION REGARDING DEFINITIVE (271:4) DELORENZO (260:23) (261:19) DENY (270:10) (271:10) DEPARTMENT (259:3) (259:13) (260:3)

DESIGNATED	EXCEPTED	INCLUDE
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	F FACTS (270:19) FEBRUARY (269:9) FEM (263:6) (268:12) (268:20) FIELD (264:12) (264:14) (265:7) FINDINGS (275:10) FINE (273:14) (275:1) FINDS (267:16) FIRST (273:8) (273:11) FIT (269:3) FOR (260:10) (261:10) (261:12) (261:24) (262:13) (262:18) (265:10) (265:15) (265:17) (266:3) (266:7) (266:22) (269:13) (270:12) (271:3) (271:5) (271:6) (272:23) (273:9) (273:14) (274:9) (275:3) (277:3) FOR HOW (268:14) FORCE (268:2) (270:16) FORGOING (277:5) FORGET (263:17) FOUR (264:3) FRANK (274:1) FRANKLIN (259:14) (260:5) FROM (262:2) (264:17) (269:22) (270:2) (270:19) (271:19) (271:21) (274:2) FULL (262:13) FURTHER (268:5) (269:15) (274:18)	
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INDIVIDUAL'S

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INDIVIDUAL'S (270:3)	MARY (265:2) (267:11)	OFFER (269:24)
INSPECTOR (259:21)	(267:21) (268:14)	OFFICE (263:25)
(271:18) (272:23)	MARCH (259:16)	(264:18) (265:9) (271:1)
INTERNAL (263:21)	(272:11) (272:22)	OFFICER (259:10)
INTERVIEWS (264:13)	MARTIN (260:9)	(259:21) (260:17)
(264:14) (265:7)	MATTER (259:2) (263:5)	(261:1) (261:3) (261:8)
INTO (266:18) (270:6)	(270:23) (277:5)	(261:15) (261:24)
(270:21) (274:19)	MATTERS (271:1)	(262:7) (262:11)
INVESTIGATE (267:17)	MERTING (262:22)	(262:12) (262:17)
(269:10) (269:13)	MESO (275:9)	(262:18) (263:8)
INVESTIGATED (267:12)	MOMENTS (264:21)	(263:18) (265:20)
(267:22) (270:14)	MICHAEL (259:21)	(267:16) (268:7)
INVESTIGATIONS	MIGHT (272:15) (272:25)	(269:16) (269:19)
INVESTIGATIVE (266:6)	MILGROM (259:15)	(270:8) (270:10)
(266:9) (266:19)	(260:6)	(270:19) (271:9)
INVESTIGATOR (267:15)	MINIMALLY (264:15)	(271:13) (271:22)
(267:23)	MINUTES (262:5)	(272:1) (272:4) (272:7)
INVOLVED (267:15)	(268:12) (273:18)	(272:24) (273:7)
IS-- (273:6)	MISSING (268:21)	(273:21) (274:5)
ISRAEL (260:17)	MONTHS (266:5)	(274:15) (274:17)
(261:15)	MORE (263:12) (272:4)	(274:24) (275:2) (277:8)
IT'S (267:5) (267:9)	MORNING (263:14)	OFFICERS (265:1)
(268:25) (270:11)	(263:15)	(268:2) (269:13) (270:16)
I'VE (271:12)	MOST (265:10)	OMAY (263:10) (266:13)
	MOTION (270:11)	(267:20) (269:15)
J	MOVE (269:21)	(269:19) (270:10)
JO-ANN (275:18)	MULTIPLE (269:6)	(271:16) (271:24)
(276:2) (276:5)		(272:7) (274:16) (275:5)
JOANNE (260:23)	N	(275:11) (275:12)
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JOB (264:7)	NARCOTICS (265:16)	ONCE (270:17)
JURAT (274:25)	(266:1) (266:4) (266:8)	ONE (265:3) (268:22)
JUST (261:10) (262:1)	PASSAD (259:4)	(268:23) (268:24)
(262:13) (262:19)	(259:13) (261:13)	ONLY (273:13)
(262:24) (263:16)	(271:15) (277:6)	OPEN (275:4)
(268:9) (270:1) (270:4)	NECESSARY (275:11)	OPERATIONS (268:19)
(270:18) (272:21)	NEED (264:4)	(269:1)
K	NEEDS (272:16)	OPINION (269:22)
KAREN (260:21) (261:21)	NEW (259:4) (259:15)	(269:24) (269:25)
KARON (260:9)	(260:6) (260:12) (277:4)	(270:4) (270:20) (271:19)
KNOW (263:5) (273:25)	(277:7) (277:17)	OPPORTUNITY (270:13)
	NEXT (269:20) (274:8)	OR- (273:5)
L	NINE (268:5)	ORGANIZATIONAL (269:4)
LAST (263:20)	NONE (267:25)	OTHER (265:2) (266:23)
LEAD (267:14) (267:23)	NOR (262:21)	(267:5) (268:3) (271:1)
LEGAL (260:18)	NORMAL (262:22)	(271:25)
(260:20) (260:22)	NORTH (277:16)	OUR (270:25) (273:5)
(260:23) (261:13)	NOT (261:7) (262:20)	OURSELVES (270:13)
(261:15) (261:18)	(267:8) (269:3) (271:20)	(270:23)
(261:19) (261:21)	(272:22) (273:5)	OUT (262:1) (264:10)
(261:24) (272:20)	(273:18) (273:19)	(265:14) (273:24)
LESSLY (260:7) (261:12)	NOT- (268:20)	OVERSEE (268:17)
LESS (270:7)	NOTARY (275:25)	(269:6)
LEY (261:2) (262:11)	(277:3) (277:17)	P
LEVEL (267:13)	NOTED (271:23) (275:15)	PAGES (276:3)
LIAISON (264:18)	NOTES (277:10)	PAGES (276:6) (277:8)
LIKE (262:1) (263:1)	NOTICE (261:5)	PART (265:10) (269:2)
(266:7) (273:23)	NOW (261:2) (261:6)	(269:5)
LLP (260:9)	(262:23) (268:25)	PARTIES (272:9)
LONG (263:17) (264:5)	(269:4) (274:17)	(272:17)
(266:3)	NUMBER (271:5)	PATROL (266:23)
LOOK (270:22)	O	(268:13) (268:16)
M	ONTH (263:11)	(268:19)
MADE (271:1) (273:4)	OBJECTION (271:23)	PATROLS (264:13)
(275:8)	OBVIOUSLY (271:20)	(265:8)
MAKE (271:13) (274:21)	OCTOBER (263:22)	PATROL'S (263:25)
MAKING (264:25)	OFF (262:7) (262:9)	PAY (271:3) (271:5)
	(270:2) (272:2) (274:3)	PBA (261:3) (262:3)

PERCELL

(262:17)
 PERCELL (262:12)
 PERIOD (265:15)
 PERSON- (264:22)
 PHONE (262:2)
 PHYSICAL (270:15)
 PLEASE (262:14)
 (263:9) (268:9) (272:12)
 POINT (262:1) (262:25)
 (274:6)
 POLICE (259:3)
 (259:10) (259:13)
 (260:3) (260:21)
 (261:13) (263:18)
 (265:9) (265:20)
 (267:12) (267:16)
 (267:18) (267:21)
 (268:2) (270:14)
 (270:16) (271:15)
 (275:10) (277:6) (277:7)
 POSITION (264:5)
 POSSIBLE (271:5)
 (274:2)
 PRECINCT (265:15)
 (265:21) (266:24)
 PRECINCTS (268:18)
 PREPARE (273:17)
 (273:20) (275:9)
 PRESENT (260:15)
 (261:6) (261:8) (262:12)
 PRIDE (266:16)
 PRIOR (273:15)
 PROBABLY (263:3)
 (268:20)
 PROCEEDING (270:6)
 PROCEEDINGS (273:15)
 PROCESS (270:8)
 PROFESSIONAL (277:2)
 (277:15)
 PROGRAM (266:16)
 (266:17)
 PROHIBITING (271:21)
 PROJECTS (265:17)
 (265:19) (266:14)
 (266:15)
 PROMOTED (267:1)
 (267:7)
 PROMOTIONAL (267:8)
 PROPER (270:15)
 PROVIDE (272:10)
 (272:12)
 PROVIDED (272:14)
 (273:14)
 PSA (260:23)
 PUBLIC (275:25)
 (277:3) (277:17)
 PURCELL (262:15)
 P-U-R-C-E-L-L (262:16)
 PUT (262:24)

Q

QUESTIONS (263:7)
 (263:12) (263:16)
 (268:6) (268:10) (269:15)

R

REACHING (273:1)
 REALIZED (270:17)
 REALLY (272:22)

TESTIMONY

REALLY-- (273:5)
 REASONABLE (271:6)
 RECALL (263:1)
 RECEIVE (275:4)
 RECEIVED (262:2)
 RECEIVING (275:6)
 RECOMMENDATIONS
 RECORD (261:2)
 (261:10) (262:8)
 (262:10) (262:12)
 (262:14) (262:25)
 (270:5) (271:22) (272:3)
 (274:4) (274:6) (274:19)
 RECROSS (269:17)
 REFLECT (261:2)
 (262:12)
 REFLECTING (275:10)
 REGULATIONS (269:14)
 (271:14)
 RELATIONS (266:20)
 (266:21)
 REMAINS (275:4)
 REMEMBER (262:19)
 REP (261:3)
 REPORTER (274:2)
 (277:1) (277:3) (277:15)
 REPORTERS (277:16)
 REPRESENTATIVE
 REQUEST (271:10)
 RE-RECROSS (263:4)
 RESPECT (268:10)
 (269:8)
 RESPONDENT (259:11)
 RESPONDENTS (260:10)
 REVIEW (270:23)
 (273:16) (275:7)
 RIGHT (269:4)
 ROAD (260:11)
 ROLE (264:1)
 RULES (269:14) (271:14)

S

SAID (265:25)
 SANDERS (277:2)
 (277:14)
 SANTIAGO (260:17)
 (261:14) (261:15)
 (272:20)
 SAY (261:24) (273:22)
 SCHEDULE (273:13)
 SCHOOLS (266:18)
 SEE (271:2)
 SENSE (273:6)
 SEPARATE (273:9)
 SERGEANT (260:17)
 (261:14) (263:2) (263:9)
 (263:10) (264:2) (267:2)
 (267:7) (269:23) (270:20)
 SERIAL (259:10) (277:8)
 SERVICES (268:24)
 (268:25) (269:2)
 SESSION (261:2)
 SET (277:11)
 SEVERAL (270:25)
 SGT (275:18) (276:2)
 (276:5)
 SHATAVIA (277:2)
 (277:14)
 SHE (269:23)

SHOOTING (267:15)
 (267:18) (269:10)
 SHOOTINGS (267:12)
 (267:21) (270:14)
 SHORE (277:16)
 SHOULD (270:8) (272:19)
 SHOWED (265:1)
 SIDE (272:5)
 SIGN (273:16)
 SIGNIFICANTLY (270:7)
 SIMULTANEOUSLY
 SOME (263:11)
 SOMEBODY (271:19)
 SOMEONE (270:2)
 SOMETHING (263:4)
 (270:7) (273:10)
 SOMEWHERE (263:3)
 SPECIAL (268:18)
 (269:1)
 SPECIALIZED (268:1)
 SPECIFICATION (259:7)
 SPECULATION (270:1)
 SPENT (263:20)
 START (265:23)
 STARTED (265:14)
 STATE (261:11)
 (262:13) (277:4) (277:17)
 STATEMENT (274:20)
 STAY (274:8)
 STICK (274:22)
 STILL (261:7) (263:2)
 (263:10)
 STREET (270:2)
 STRIKE (269:21)
 STRUGGLE (259:21)
 (261:1) (262:7) (262:11)
 (262:17) (263:8) (268:7)
 (269:16) (269:19)
 (270:10) (271:9)
 (271:22) (272:11) (272:4)
 (272:7) (272:24) (273:7)
 (273:21) (274:5)
 (274:15) (274:17)
 (274:24) (275:2)
 SUBMISSION (273:20)
 SUBMISSIONS (272:10)
 (273:4) (274:8) (274:10)
 (274:23) (275:5)
 SUBMIT (272:16)
 (272:19) (273:11) (273:10)
 SUBSCRIBED (275:20)
 SUPERVISE (268:17)
 SURE (264:25) (269:3)
 SWORN (275:20)

T

TACTICAL (268:24)
 (268:25)
 TAGCART (260:21)
 (261:21)
 TAKE (264:7) (265:5)
 (271:17)
 TAKEN (270:21) (277:5)
 TEMPTED (261:23)
 TEN (273:9) (274:11)
 TESTIFIED (268:12)
 TESTIFY (265:1)
 (270:24) (271:7)
 TESTIMONY (269:22)

THAN

(269:25) (271:19)
 (274:25) (275:7) (277:5)
 THAN (268:3) (270:7)
 (274:13)
 THANK (275:13)
 THAT (261:2) (262:1)
 (262:2) (262:12)
 (262:19) (262:25)
 (263:1) (263:4) (263:24)
 (264:5) (264:7) (264:13)
 (264:16) (265:3)
 (265:12) (265:13)
 (265:25) (266:10)
 (266:14) (266:19)
 (267:15) (267:19)
 (268:12) (268:20)
 (268:21) (269:25)
 (270:3) (270:5) (270:7)
 (270:18) (270:19)
 (270:25) (271:3) (271:4)
 (271:16) (271:17)
 (272:9) (272:13)
 (272:15) (272:25)
 (273:1) (273:11)
 (273:12) (273:13)
 (273:14) (274:2) (274:7)
 (274:19) (274:20) (277:4)
 THAT'S (266:22)
 (267:3) (275:1)
 THE (259:2) (260:4)
 (260:10) (261:2) (261:5)
 (261:10) (261:12)
 (262:2) (262:7) (262:10)
 (262:11) (262:13)
 (262:22) (262:23)
 (262:24) (263:5)
 (263:20) (264:2)
 (264:17) (264:19)
 (264:21) (264:22)
 (265:3) (265:4) (265:8)
 (265:9) (265:10)
 (265:14) (265:15)
 (265:16) (265:20)
 (266:13) (266:16)
 (266:17) (266:18)
 (266:22) (266:24)
 (267:6) (267:8) (267:11)
 (267:14) (267:23)
 (268:2) (268:3) (268:13)
 (268:18) (269:3) (269:4)
 (269:8) (269:10)
 (269:13) (269:14)
 (269:19) (269:22)
 (270:2) (270:5) (270:7)
 (270:11) (270:15)
 (270:17) (270:18)
 (270:22) (270:23)
 (271:2) (271:14)
 (271:15) (271:22)
 (272:3) (272:12)
 (272:17) (272:20)
 (273:13) (273:15)
 (273:17) (273:18)
 (273:23) (273:24)
 (274:1) (274:2) (274:4)
 (274:6) (274:8) (274:9)
 (274:11) (274:12)
 (274:19) (274:22)
 (275:3) (275:4) (275:6)

(275:7) (275:8) (275:9)
 (275:14) (277:3) (277:4)
 (277:5)
 THEM (268:22) (268:24)
 (270:3) (273:16) (273:17)
 THEN (266:13) (269:1)
 (270:12) (273:8)
 (273:12) (273:19)
 THERE (264:1) (265:2)
 (265:7) (268:14)
 (270:19) (270:25)
 THEREAFTER (275:9)
 THERE'S (268:20)
 (272:24)
 THEY (264:4) (269:3)
 (269:5) (269:6) (270:3)
 (271:4) (271:5) (272:19)
 (274:11) (274:19)
 THING (273:13)
 THINGS (265:2)
 THINK (263:3) (270:5)
 (271:16)
 THIS (261:1) (262:20)
 (262:21) (262:25)
 (267:17) (270:6) (271:8)
 (272:8) (272:9) (274:6)
 (275:3) (275:20) (277:11)
 THOSE (272:19) (273:4)
 (273:7) (273:9) (275:5)
 THOUGHT (262:2) (270:3)
 THREE (263:20) (264:6)
 (268:14) (268:15)
 THROUGH (272:19)
 (277:9)
 TIME (261:4) (264:13)
 (266:16) (269:4)
 (271:10) (272:9)
 (273:15) (273:25)
 (275:15)
 TODAY (275:3)
 TOLD (271:4)
 TRAINED (270:15)
 TRAINING (268:1)
 TRANSCRIPT (273:14)
 (273:24) (275:4)
 TRANSCRIPTION (277:9)
 TRANSCRIPTS (274:1)
 (274:12)
 TRANSFORMS (270:6)
 TRIAL (262:21)
 TRYING (265:11)
 TWO (266:22)

U

UNDER (263:11)
 UNDERCOVER (266:7)
 (266:9)
 UNDERSTAND (264:3)
 UNDERSTANDING (262:25)
 UNION (271:2)
 UNITS (269:6)
 UNTIL (264:17)
 (273:19) (275:4)
 USE (268:2) (270:15)
 USED (271:1)
 UTTER (269:25)

V

VALUABLE (270:4)

VIOLATE

VIOLATED (271:14)
 VIOLATIONS (269:14)
 W
 WANT (262:19) (262:24)
 (269:16) (271:4)
 (272:16) (272:25)
 (273:1) (273:11)
 (274:19) (274:20)
 WAS (261:3) (261:6)
 (262:9) (264:2) (264:7)
 (265:3) (266:10)
 (266:14) (266:17)
 (269:1) (270:20) (272:2)
 (274:3) (275:15)
 WEAPON (267:16)
 WEDNESDAY (272:11)
 (272:18) (274:9)
 WEEK (273:12)
 WRIGHT (270:11)
 WELL (273:24)
 MR'LL (274:22)
 WEEK (263:17) (263:23)
 (264:21) (264:25)
 (265:2) (265:7) (265:20)
 (266:23) (267:1)
 (267:14) (268:13)
 (268:14) (269:5) (269:9)
 (269:12) (273:4)
 WE'RE (261:7) (261:10)
 (263:3) (273:11)
 (273:18) (274:5) (274:7)
 (275:2)
 WEREN'T (270:18)
 WHAT (264:1) (265:18)
 (266:7) (266:14)
 (266:15) (267:13)
 (268:16) (269:12)
 (270:3) (272:22) (273:21)
 WHATEVER (264:3)
 (270:6)
 WHEN (262:5) (265:23)
 (266:11) (267:1) (267:8)
 (272:12) (274:1)
 WHERE (262:23)
 (263:23) (265:13)
 (266:17) (267:14)
 (269:3) (271:12)
 WHEREOF (277:11)
 WHEREUPON (262:9)
 (272:2) (274:3) (275:14)
 WHETHER (271:13)
 WHICH (266:16) (274:9)
 WHO (262:3) (263:2)
 (270:13) (271:20)
 (272:19)
 WHO'S (261:11)
 WILL (271:5) (274:11)
 (275:6) (275:9)
 WILLIAM (262:15)
 WITH (261:9) (262:3)
 (262:23) (265:8)
 (268:10) (269:8)
 (270:18) (271:2)
 (271:23) (272:7)
 (272:10) (272:13)
 (273:15) (273:17)
 (274:8) (274:22) (275:1)
 WITHIN (262:4)

283

WITNESS	YOU'VE
<p>WITNESS (269:26) (271:11) (275:15) (277:11) WITNESSES (271:25) (272:5) (272:8) WORDS (267:5) WORK (264:19) (265:13) (266:3) WORKED (264:2) (264:10) (264:17) (264:22) (265:4) (265:15) (265:16) (265:25) (266:13) WOULD (262:1) (263:1) (266:17) (270:4) (271:3) (271:16) (271:17) (273:3) (273:8) (273:23) WRITTEN (273:20) (274:23)</p>	
Y	YOU'VE
<p>YEAH (273:7) YEAR (265:17) YEARS (263:19) (264:6) (265:11) (265:12) (266:22) (266:23) (268:14) (268:15) YES (264:9) (264:11) (264:20) (265:6) (265:10) (265:22) (266:2) (266:25) (267:24) (268:9) (269:7) YORK (259:4) (259:15) (260:5) (268:22) (277:4) (277:7) (277:17) YOU (263:18) (263:20) (263:23) (264:1) (264:5) (264:10) (264:12) (264:19) (264:21) (264:22) (264:25) (265:4) (265:8) (265:11) (265:13) (265:20) (265:23) (265:25) (266:3) (266:7) (266:13) (266:23) (267:1) (267:9) (267:12) (267:14) (267:21) (268:1) (268:8) (268:12) (268:13) (268:14) (269:9) (269:12) (269:16) (271:17) (271:18) (272:12) (272:15) (272:25) (273:1) (273:9) (273:21) (274:12) (274:20) (275:13) YOUR (262:13) (263:17) (267:11) (269:20) (270:11) (271:10) (271:23) (272:22) (273:8) (275:8) YOU'RE (263:10) (271:20) YOU'VE (271:10) (271:19)</p>	

EXHIBIT C

Barket, Marion, Epstein & Kearon, LLP
Attorneys at Law
666 OLD COUNTRY ROAD, SUITE 700 • GARDEN CITY, NEW YORK 11530
[P] 516.745.1500 • [F] 516.745.1245

Bruce A. Barket
Amy B. Marlón

Steven B. Epstein
Kevin T. Kearon

Hon. Elaine Jackson Stock
Of Counsel

August 28, 2012

To: Commanding Officer, Legal Bureau
From: PO Anthony DiLeonardo, Shield No. 3632, Serial No. 9013, Third Precinct
Subject: ANSWER TO CHARGES AND SPECIFICATIONS; CASE NO. 8118

1. On the advice of my counsel, Amy B. Marion, Esq., Barket, Marion, Epstein & Kearon, LLP, I hereby plead not guilty to all the charges and specifications, numbered 1 through 13, in connection with the above-referenced case number.

2. I reserve the right to call any witnesses as they become known to me.

3. I will be represented by Amy B. Marion, Esq., 666 Old Country Road, Suite 700, Garden City, New York 11530. 516-745-1500.

Respectfully,


PO Anthony DiLeonardo


Amy B. Marion, Esq.
Counsel for Anthony DiLeonardo

-----X
In the Matter of the Disciplinary Action:

Hearing Officer - Inspector Michael Studdert

POLICE DEPARTMENT
County of Nassau, New York

-against-

Case No: 8118

Anthony DiLeonardo
Police Officer, Serial 9013

-----X
The Nassau County Police Department ("N.C.P.D.") respectfully submits it has demonstrated substantial evidence to the Departmental Hearing Officer to support the Charges and Specifications that were the subject of a Departmental Disciplinary Hearing against P.O. DiLeonardo. The Departmental Hearing was held pursuant to Article 9 of the N.C.P.D. Rules and Regulations and Civil Service Law § 75. The Department submits that substantial evidence was presented to support the three (3) charges that are before the Hearing Officer, Counts 3, 4, and 11 of the Charges and Specifications (Dept. Exhibit 22). The substantial evidence set forth at the Departmental Hearing included the testimony of Detective Sergeant Jo Ann Distler, twenty-three (23) documents submitted as evidence at the hearing and three (3) supplemental exhibits submitted by the Department while the record was still open.

PROCEDURAL HISTORY

Reports of Violations of Department Rules (PDCN 209) (Dept. Exhibits 17, 19A, 21) were served on P.O. DiLeonardo on July 2, 2012. On July 10, 2012, the Disciplinary Review Board ("DRB"), reviewed the violations and converted the PDCN 209s to the service of formal Charges and Specifications, pursuant to Article 9 of the Department Rules and Regulations. The PDCN 209s were then converted to PDCN 210s (Dept. Exhibit 22) and endorsed by the Commissioner of Police on August 22, 2012. The Charges and Specifications were served on P.O. DiLeonardo on August 22, 2012. P.O. DiLeonardo answered the Charges and Specifications on August 28, 2012 via letter from his attorneys Barket, Marion, Epstein & Kearon, LLP (See Exhibit A attached hereto). This matter was originally set down for a hearing on December 4, 2012, but adjourned at that time by the Department. The matter was again scheduled for February 10, 2014. On that date the case was adjourned by counsel for P.O. DiLeonardo and the parties agreed to an adjourn date of March 10, 2014. The Disciplinary Hearing did in fact commence on March 10, 2014. At the end of the Department's direct examination of their witness, the Department moved to amend the Charges and Specifications under case 8118 to reflect only Count 3, 4, and 11. Those are the counts before the Hearing Officer for determination and recommendation pursuant to N.C.P.D. Rules Article 9.

STATEMENT OF FACTS

On February 27, 2011, at approximately 8:00 p.m. Police Officers Anthony DiLeonardo and Edward Bienz went out socially in Huntington, New York with their dates, Sophia Cornia (P.O. DiLeonardo's date "Cornia") and Jillian Bienz, (P.O. Bienz's wife). Both officers and their dates had admittedly been drinking alcohol throughout the night in several bars in the Huntington area (Dept. Exhibits, 7, 9, 13). P.O. DiLeonardo, by one account had seven (7) vodka drinks. At approximately 1:00 am (Dept. Exhibit 13, para 4) the two couples decided to leave the last bar. P.O. DiLeonardo was driving his girlfriend's car a white 2011 Infiniti, and P.O. Bienz was driving a blue Acura. P.O. DiLeonardo was following P.O. Bienz and at some point they got lost in the Huntington area. There are allegations of a road rage incident that took place between P.O. Bienz, P.O. DiLeonardo and a taxi cab that was being driven by Thomas Moroughan, ("Moroughan") who had a passenger, Kristie Mondo. Moroughan was driving a taxi and was initially passed by P.O. Bienz in the blue Acura. Moroughan was then passed by P.O. DiLeonardo in the white Infiniti. The statements and documents in evidence offer different opinions as to the level of aggressive driving (Dept. Exhibits 1, 6, 7, 9, 10, 11, 13). P.O. Bienz and P.O. DiLeonardo did separate from the cab. At approximately 01:15, approximately fifteen (15) minutes after they left the last bar, they encountered Moroughan again while they were pulled over on the side of Oakwood Road, trying to figure out where they were. P.O. Bienz's car was in front of the car that P.O. DiLeonardo was driving. Moroughan pulled up next to the Infiniti that P.O. DiLeonardo was driving and Moroughan and DiLeonardo got involved in a shouting match. As the shouting escalated all four people from the Acura and the Infiniti exited their vehicles at different times as did Moroughan. Moroughan retreated to his car / taxi, got in and reversed the taxi. P.O. DiLeonardo pursued him on foot. Moroughan then attempted to exit the area by trying to get his taxi moving forward. There are conflicting statements regarding both the movement of the taxi and the level of noise the car was making. However, the evidence has shown that it is almost silent when in the stopped position (Dept. Exhibit 6) and that P.O. DiLeonardo drew his weapon and approached the cab after Moroughan backed up the car a minimum of 35-45 feet, as Moroughan was attempting to leave.

It is at this time that P.O. DiLeonardo fired his off duty, .38 Caliber Smith & Wesson at Moroughan's taxi. Moroughan was attempting to get away from P.O. DiLeonardo. Moroughan then moved forward in an attempt to make a u-turn. P.O. DiLeonardo fired five (5) shots, striking the windshield three (3) times and Moroughan's body twice, emptying his weapon of bullets. Moroughan's vehicle came to a stop (Dept. Exhibits 1, 7, 6, 9, 10, 11, 12, 13) P.O. DiLeonardo continued to approach Moroughan's taxi with his empty weapon in his hand. Moroughan continued to try to get away from P.O. DiLeonardo. P.O. DiLeonardo then took that weapon and used it to shatter the driver's side window of Moroughan's taxi (Dept. Exhibit 13, line 9). P.O. DiLeonardo never retreated. Moroughan was attempting to get away from P.O. DiLeonardo, he was not attempting to hurt him or run him down with his car.

P.O. DiLeonardo escalated the matter further by getting into a physical altercation with Moroughan. P.O. DiLeonardo punched Moroughan in the face at least ten (10) times including

striking him in his face with the butt of the .38. This was a violent altercation which resulted in Moroughan sustaining physical injury, a broken nose. P.O. DiLeonardo on the other hand, sustained minor injuries. Moroughan hit him with his car in an effort to break free of P.O. DiLeonardo.

It is during this violent altercation that P.O. DiLeonardo failed to safeguard his assigned off duty .38 caliber Smith & Wesson. It is undisputed that this weapon was later located in the rear compartment of the taxi that Moroughan was driving. There comes a time when Moroughan is able to drive away from this location and drive himself to the hospital. Kirstie Mondo called 911 as soon as they were free from P.O. DiLeonardo.

At Huntington Hospital Moroughan was treated for multiple gun shot wounds and a left nasal bone fracture (Dept. Exhibit 18). Moroughan's car was impounded at the hospital and P.O. DiLeonardo's off duty .38 caliber Smith & Wesson was recovered from the rear floor area of the taxi (Dept. Exhibit 6). It is also at this location that photographs were taken of the damage to the car, (including but not limited to damage to the windshield and drivers side window) and the location of the off duty weapon in the taxi (Dept. Exhibits 2,3,4,5, 20). D/Sgt. Distler interviewed one of the owners of the taxi that Moroughan was driving. Boris Goldstein who stated that it cost him a couple of thousand dollars to fix the damage to the car.

ISSUE PRESENTED

Has the N.C.P.D. established substantial evidence to support Counts 3, 4, and 11 of the Charges and Specifications (PDCN 210)?

BRIEF ANSWER

Yes. The N.C.P.D. has presented more than what a reasonable mind would consider substantial evidence for each of the three (3) charges before the Departmental Hearing Officer.

SUBSTANTIAL EVIDENCE

The Nassau County Administrative Code (N.C. Admin.Code) sets forth under what circumstances the Commissioner of Police may discipline a Department member. N.C. Admin. Code § 8-13.0(b)(3), states, "[s]uch members shall be disciplined for the following reasons [only]: (3) Violation of Rules." Additionally, New York State Civil Service Law (hereinafter Civ. Serv.) § 75 governs removal and other disciplinary actions for police officers. Pursuant to N.Y.S. State Administrative Procedure Act § 306, the standard of proof at an administrative disciplinary hearing is "substantial evidence." Substantial evidence is defined as such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. It is less than a preponderance of the evidence and, as a burden of proof, it demands only that a given inference is reasonable and plausible, not necessarily the most probable. Miller v. DeBuono, 90 N.Y.2d 783 (1997).

Furthermore, [h]earsay evidence can be [the] basis for administrative determination[s]. See Gray v. Adducci, 73 N.Y.2d 741 (1988). See also: People ex rel. Vega v. Smith, 66 N.Y.2d 130 (1985); Matter of Lahey v. Kelly, 71 N.Y.2d 135 (1987); Matter of National Basketball Assn. v. New York State Div. of Human Rights, 68 N.Y.2d 644 (1986); and People ex rel. McGee v. Walters, 62 N.Y.2d 317 (1984).

Finally, "Corroboration of accomplice testimony is not required in police disciplinary hearings involving charges of misconduct of criminal nature." See Berenhaus v. Ward, 70 N.Y.2d 436 (1987).

The N.C.P.D. has established substantial evidence to support the charges and specifications. P.O. DiLeonardo was obligated to abide by the Rules and Regulations of the N.C.P.D. P.O. DiLeonardo violated the Rules and Regulations. His actions on the morning of February 27, 2011 were a gross deviation from what would be expected from a Nassau County Police Officer. The charges against P.O. DiLeonardo were filed following a thorough and objective investigation by the Internal Affairs Unit ("IAU"). P.O. DiLeonardo has in fact admitted to most of the underlying actions/behavior which led to the charges filed in this matter.

Therefore, it is submitted that for the reasons more fully detailed below the N.C.P.D. has provided substantial evidence that P.O. DiLeonardo violated the Charges and Specifications before the Hearing Officer.

WITNESSES PRESENTED

I. N.C.P.D. Witness Detective Sergeant Jo Ann Distler

The N.C.P.D. called Detective Sergeant ("D/Sgt.") Jo Ann Distler, to testify in support of its position that P.O. DiLeonardo was in violation of multiple sections of the Departmental Rules and Regulations. D/Sgt. Distler testified that she has been a police officer for almost twenty-nine (29) years. Throughout, her career, D/Sgt. Distler has held various ranks and designations within the Department. D/Sgt. Distler began her career on patrol in the First Precinct and went on to work in the Narcotics Vice Bureau and Community Projects Bureau. In 1995, she was promoted to Sergeant and assigned to the Court Liaison Office. While at Court Liaison, her duties included but were not limited to; supervising, guiding, and instructing members who were scheduled to appear at court, coordinating the preparation, examination, and presentation of all documents and instruments submitted to the Court and coordinating the activities of the Police Department and the Criminal Court System.

In 2007, D/Sgt. Distler was assigned to the Chief of Patrol's Office. The Office of the Chief of Patrol is responsible for the oversight of the following commands: Emergency Ambulance Bureau, Auxiliary Police Section, all the Precincts (First through Eighth), Tactical Field Services, Field Services (Highway Patrol Bureau, Motorcycle Platoon, Motor Carrier Safety Unit, Expressway Platoon, Marine / Aviation Bureau).

D/Sgt. Distler was assigned to the Internal Affairs Unit in 2010. Six (6) months into this assignment she was designated Detective Sergeant. In IAU one of her responsibilities is to preserve the reputation and protect the integrity of the N.C.P.D., through prompt and comprehensive investigation of all allegations of misconduct by its members. In addition, the Internal Affairs Unit, through the members assigned thereto, seeks to assure adherence to the highest standards of conduct by Department members. IAU members monitor and investigate the conduct of members through various proactive inspections, audits, and other measures of ensuring compliance with Department rules and procedures.

It is important to note, that D/Sgt. Distler has been a lead investigator on approximately forty-five (45) IAU Investigations and has assisted in over two hundred (200) IAU investigations (see Affidavit, Dept. Supplemental Exhibit 1). For each case she has investigated, D/Sgt. Distler has been responsible for a complete and thorough investigation into allegations of violations of the rules and regulations of the N.C.P.D. Additionally D/Sgt. Distler is required to detail her findings and present her conclusions and recommendations at the completion of each investigation. These conclusions and recommendations are approved by the Commanding Officer of IAU and the Commissioner of Police.

Counsel for P.O. DiLeonardo has argued that D/Sgt. Distler's testimony should be discounted because she has never investigated a police involved shooting. It is the position of the N.C.P.D. that the issue of whether or not D/Sgt. Distler has ever investigated a shooting is irrelevant to the instant matter. D/Sgt. Distler was not tasked with investigating a shooting. Rather, she was assigned to investigate if P.O. DiLeonardo violated the Rules and Regulations of the N.C.P.D. As demonstrated through her testimony and outlined above, (and in Dept. Supplemental Exhibit 1) it is clear that D/Sgt. Distler's experience and expertise uniquely qualifies her for these types of investigations.

The shooting of Moroughan by P.O. DiLeonardo was investigated by the Suffolk County Police Department. D/Sgt. Distler utilized the findings of the Suffolk County Police Department, which included the reports of various bureaus within that agency, to aid in her investigation as to potential violations of the N.C.P.D. Rules and Regulations. These bureaus include but are not limited to the Crime Scene team and the Suffolk County Division of Medical- Legal Investigations & Forensic Sciences Crime Laboratory. The Division of Medical - Legal Investigations & Forensic Sciences generated the Shooting Incident Reconstruction Report (Dept. Exhibit 6) that D/Sgt. Distler referenced in the course of her investigation. The N.C.P.D. concedes that D/Sgt. Distler did not investigate the actual shooting. Rather, she relied upon the investigation conducted by Suffolk County, in reaching her ultimate determination. That determination being that P.O. DiLeonardo did engage in misconduct and did in fact violate the Rules and Regulations of the N.C.P.D.

Respondent's position, that the Hearing Officer should "strike" D/Sgt. Distler's testimony, because she is not an expert, is misplaced. As outlined above, D/Sgt. Distler's experience and assignments/positions throughout the Department for almost thirty (30) years demonstrates that she is clearly competent and versed in the Departmental Rules and Regulations. D/Sgt. Distler testified that she was familiar with the facts of this case, the underlying IAU investigation

(including; statements of witnesses and P.O.s DiLeonardo and Bienz which she herself took), and the results of the Suffolk County Police Department's investigation. D/Sgt. Distler has the requisite expertise to formulate opinions and draw conclusions to come to findings with respect to the Nassau County Police Department Rules and Regulations. Therefore, N.C.P.D. submits that based on her training and experience, the testimony of D/Sgt. Distler, and her ultimate conclusion that P.O. DiLeonardo violated the Rules and Regulations, should be given great weight in this Departmental Disciplinary Hearing.

II. P.O. DiLeonardo did not call any witnesses on his behalf. Counsel for P.O. DiLeonardo made a late request to the Departmental Hearing Officer to call a rebuttal expert witness which was denied (see Hr'g Tr. 270-271).

III. P.O. DiLeonardo did submit a supplemental expert opinion while the record was still open. This expert report was signed by Joseph F. Zogbi, a retired N.Y.P.D Detective. While Mr. Zogbi has an impressive background with the N.Y.P.D., there is nothing in his report or his qualifications that indicates that Mr. Zogbi has ever been qualified as an expert in any court on any issue before this Departmental Hearing Officer (contrast Curriculum Vitae, George Krivosta, Department Supplemental Exhibit 3. Mr. Krivosta is the analyst who is the signature on the County of Suffolk Division of Medical – Legal Investigations & Forensic Sciences Crime Laboratory Shooting Incident Reconstruction Report (Dept. Exhibit 6). Mr. Krivosta has been recognized in multiple courts and jurisdictions as an expert in Ballistics, Department Exhibit 6). Mr. Zogbi's opinions will be addressed further below.

ARGUMENT

I. Internal Affairs Unit had more than Substantial Evidence to support the Charges and Specifications

P.O. DiLeonardo violated Department Rules Article 5, Rule 2 (1), when he engaged in Unlawful Conduct by Assaulting Thomas Moroughan

While P.O. DiLeonardo was off duty, he did admittedly strike Moroughan in the nose with his .38 caliber Smith & Wesson revolver, causing a fracture to Moroughan's nose. The finding that P.O. DiLeonardo engaged in unlawful conduct by using his revolver to break Moroughan's nose was based on not only the admission of P.O. DiLeonardo to D/Sgt. Distler of IAU, that he used his weapon which was in his hand when he was engaged in a physical altercation (Dept. Exhibit 7, lines 42 & 44) with Moroughan, but several other critical pieces of evidence.

In his statement to D/Sgt. Distler in IAU, P.O. Bienz stated that, he saw P.O. DiLeonardo with his "gun in his hand" and he "beg[a]n smashing the driver's side window with his weapon in his right hand...he was trying to pull the driver out of the vehicle ...[he] had his gun in his right hand ... and was reaching inside the vehicle with his left hand..." (Dept. Exhibit 13, line 9).

Moroughan in his statement to Suffolk County Police Department, (Dept. Exhibit 10) and in both of his 50-H depositions under oath (Dept. Exhibits 14, 15) stated that P.O. DiLeonardo, "... came up to my driver's side window and smashed his gun busting my window and hitting me in the face (Dept. Exhibit 10), he "[h]it me on my nose with the butt of the gun...He's punching me on the side of my face and head. He grabbed me by my arm with his left hand. He's punching me in my face with his right arm." (Dept. Exhibit 14, page 66, lines 14-19, page 67 lines 13-14), and "He busted open the driver's side window with the butt of his gun. He then struck me in the face with the butt of the gun, proceeded to open my car door. He... reached over me; he was punching me in my face. .. He was just swinging away. Like he punched me in my face at least ten times" (Dept. Exhibit 15, page 132, lines 24-25, page 133, lines 2-5, 12-14).

Finally, the finding that P.O. DiLeonardo broke Moroughan's nose was supported by a review of the Huntington Hospital Report (Dept. Exhibit 18). The report confirms that Moroughan did in fact suffer a fracture of the left nasal bone with mild medial displacement of the fractured fragments among other injuries. See *In re Dawn S.*, 201 A.D.2d 918 (1994), where "[t]he victim was punched and kicked repeatedly in the face and head. Respondent concedes that she struck the victim. The victim sustained numerous injuries, including a fractured nose and cheekbone. That evidence was sufficient to establish beyond a reasonable doubt that respondent intended to inflict serious physical injury upon the victim" (see *People v. Delgado*, 167 A.D.2d 181, 182, (1990) *lv denied* 77 N.Y.2d 905 (1991)).

This finding was made by the members of the Internal Affairs Unit, D/Sgt. Distler, Detective Lieutenant Ralph Hoffman and Inspector Edward Dordon and approved by the Commissioner of Police. The above actions taken by P.O. DiLeonardo were unlawful and could have been charged as a violation of N.Y.S Penal Law § 120.05(2). Assault in the Second Degree: A person is guilty of assault in the second degree when: (2) With the intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument[.] See also, N.Y.S. Penal Law § 10.00 [10] "Physical injury" means impairment of physical condition or substantial pain.

P.O. DiLeonardo violated Department Rules Article 5, Rule 2 (1), when he engaged in Unlawful Conduct by causing damage to the vehicle that Moroughan was driving in excess of \$1500.00

While P.O. DiLeonardo was off duty, he did admittedly; "... fire[d] my weapon at the driver ... (Dept. Exhibit 7, line 33)...I continued to fire my weapon...I observed that the windshield was still in place but shattered, it appeared that my shots had damaged the windshield" (Dept. Exhibit 7, lines 34, 39); and "I believe that I smashed the driver's side window with the butt of my weapon" (Dept. Exhibit 7, line 42). These statements were made to D/Sgt. Distler of IAU. This finding was also supported by photographs taken by the Suffolk County Police Department (Dept. Exhibits 2,3).

The finding that P.O. DiLeonardo engaged in unlawful conduct by using his revolver to cause damage to 2010 Toyota Prius taxi cab, being driven by Moroughan, was made by the members of the Internal Affairs Unit, D/Sgt. Distler, Detective Lieutenant Ralph Hoffman and Inspector

Edward Dordon, and approved by the Commissioner of Police. The finding that P.O. DiLeonardo engaged in unlawful conduct by causing damage to the vehicle in excess of \$1500 was based not only the admission of P.O. DiLeonardo but several other critical pieces of evidence.

In his statement to D/Sgt. Distler in IAU P.O. Bienz stated, he saw P.O. DiLeonardo with his "gun in his hand" and he "beg[a]n smashing the driver's side window with his weapon in his right hand..." (Dept. Exhibit 13, line 9).

Moroughan in his statement to Suffolk County Police Department, (Dept. Exhibit 10) and in both of his 50-H depositions under oath (Dept. Exhibits 14, 15) stated; that P.O. DiLeonardo, "... came up to my driver's side window and smashed his gun busting my window and hitting me in the face (Dept. Exhibit 10), "He busted open the driver's side window with the butt of his gun." (Dept. Exhibit 15, lines 24-25).

Kristie M. Mondo, the girlfriend of Moroughan, in her statement to Suffolk County Police, stated, "I was ducking down when I heard my boyfriend's window to his door break. It shattered. I looked up and my boyfriend was struggling with the guy in the orange shirt." (Dept. Exhibit 11).

The report of the Suffolk County Division of Medical-Legal Investigations & Forensic Sciences Crime Laboratory, entitled Shooting Incident Reconstruction Report (Dept. Exhibit 6, page 6) "DiLeonardo approaches the driver's door then shatters the driver's window with the revolver." This finding was also supported by photographs taken by the Suffolk County Police Department (Dept. Exhibits 4,5).

The report of the Suffolk County Division of Medical-Legal Investigations & Forensic Sciences Crime Laboratory, entitled Shooting Incident Reconstruction Report (Dept. Exhibit 6, Page 4,5) further states, "The vehicle described as being hit by three (3) shots... the bullet penetrated the left center portion of the windshield,... the bullet penetrated the right center lower portion of the windshield,... the bullet penetrated the right center portion of the windshield." This finding was also supported by photographs taken by the Suffolk County Police Department (Dept. Exhibits 2,3).

Finally, D/Sgt. Distler interviewed one of the owners of the vehicle that Moroughan was driving the morning of February 27, 2011, Boris Goldstein (Hr'g Tr. 116-117) on September 26, 2011, after the vehicle was repaired. Mr. Goldstein told D/Sgt. Distler that the vehicle cost him a couple of thousands of dollars to repair. See People v. Singleton, 291 A.D.2d 869 (2002), where the court held that the testimony of the victim established that the cost of repairing her property exceeded \$ 1,500. See also, People v. Brown, 177 A.D.2d 942 (1991) stating, "In order to support a conviction for third degree criminal mischief, 'it is sufficient to define value in terms of the cost of repair to the property, so long as the property is repairable'" (People v. Simpson, 132 A.D.2d 894, 895, lv denied 70 N.Y.2d 937 (1987)).

All of the above actions taken by P.O. DiLeonardo were unlawful and could have been charged as a violation of N.Y.S Penal Law § 145.10. Criminal Mischief in the Second Degree: A person

is guilty of criminal mischief in the second degree when with the intent to damage property of another person, and having no right to do so nor any reasonable ground to believe he has such right, he damages the property of another person in an amount exceeding one thousand five hundred dollars. Criminal Mischief in the second degree is a class D Felony.

P.O. DiLeonardo violated Department Rules Article 8, Rule 12(2) when he failed to safeguard his weapon after using it to break the window of Moroughan's vehicle and used it during a physical altercation with Moroughan

While P.O. DiLeonardo was off duty, he did admittedly use his assigned .38 caliber Smith & Wesson revolver to break the driver's side window of the 2010 Toyota Prius taxi cab being driven by Moroughan. P.O. DiLeonardo failed to safeguard the revolver and lost his weapon in the vehicle. (Dept. Exhibit 7). This weapon was assigned to him by virtue of him being a N.C.P.D. Police Officer and pursuant to the N.C.P.D. Rules and Regulations (Dept. Exhibit 23). This finding was made by the members of the Internal Affairs Unit, D/Sgt. Distler, Detective Lieutenant Ralph Hoffman and Inspector Edward Dordon and approved by the Commissioner of Police. The finding that he did not safeguard the off duty .38 caliber Smith & Wesson that was assigned to him pursuant to Department Rules Article 8, Rule 3(b), was based on not only the admission of P.O. DiLeonardo but several other critical pieces of evidence.

In his statement to D/Sgt. Distler in IAU, P.O. Bienz, (Dept. Exhibit 13, line 10) stated, "Anthony did tell me at some point he lost his gun in the cab."

The report of the Suffolk County Division of Medical-Legal Investigations & Forensic Sciences Crime Laboratory, entitled Shooting Incident Reconstruction Report (Dept. Exhibit 6, page 7), "During this struggle DiLeonardo will lo[ose] possession of his revolver within the taxi, where it will eventually be recovered on the left rear passenger floor area." This finding was also supported by photographs taken by the Suffolk County Police Department (Dept. Exhibit 20).

II. P.O. DiLeonardo's was not denied due process by the Hearing Officer not allowing him to call an expert

At the close of the hearing on March 19, 2014, counsel for the Respondent requested an adjournment to attempt to secure an expert. Indicating that an expert was needed to rebut the entire testimony of D/Sgt. Distler as she is not an expert in police shootings (Hr'g Tr. 270-271). Again, it is submitted that this line of reasoning is misplaced in the matter before the Department Hearing Officer. The request was denied and the objection noted for the record. It is submitted that counsel had more than enough notice to secure such a witness and at that juncture adjourning would just cause unnecessary delay.

Prior to this hearing, counsel for the Respondent actually requested that the Commissioner of Police sign fifteen (15) subpoenas to produce various witnesses from the Nassau County Police Department, the Suffolk County Police Department and one independent eye-witness. All

subpoenas were signed by the Commissioner of Police. In fact, included on that list were the members of the Suffolk County Crime Scene Laboratory that generated the Shooting Incident Report (Dept. Exhibit 6). None of these witnesses were called by P.O. DiLeonardo. It is submitted that the Commissioner of Police signed the subpoenas for the production of the very people that created the shooting incident report that D/Sgt. Distler relied on for facts and evidence about the shooting. The Respondent had the opportunity to call any of these witnesses, but none were produced. D/Sgt. Distler was not called as an expert shooting investigator, she was not offering an expert opinion on investigating a shooting. Therefore, P.O. DiLeonardo was not denied due process.

Furthermore, the Respondent was permitted to submit an expert opinion to supplement the record. Respondent offered the hearsay expert opinion of Mr. Joseph Zogbi which is in the record uncontested.

III. P.O. DiLeonardo was not denied due process by being charged with Art 8, Rule 12 (2)

Respondent mentioned on and off the record, (Hr'g Tr. 233-238) and presumably will argue that he (a) didn't have notice that his off duty .38 caliber Smith & Wesson was subject to Article 8, Rule 12 (2) and; that (b) this rule does not apply to his off duty .38 caliber Smith & Wesson.

P.O. Dileonardo is required to know the Departmental Rules and Regulations. (See Nassau County Police Department Administrative Rule 1110 definitions, "Department Manual, a manual containing the written policies, procedures, and rules of the Department to be used by members in the performance of their official duties;" Nassau County Police Department Rules and Regulations, Article 1, Rule 7 (2), "Rules, orders and memoranda require strict compliance," and; Nassau County Police Department Rules and Regulations, Art 6, Rule 1(4), "Members of the Department who are issued a Department Manual will maintain the manual by properly inserting documents when they are issued").

It has been inferred/alleged that P.O. DiLeonardo did not have notice that failing to safeguard his weapon, included losing his off duty .38 caliber Smith & Wesson in someone else's vehicle, was a violation of the Rules and Regulations. P.O. DiLeonardo was served with the reports of Violations of the Rules and Regulations on July 2, 2012. It was not until this hearing that he challenged the nature of the charge as contained in the Charges and Specifications.

The U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment requires that an individual be given an opportunity to be heard before being deprived of any "significant property interest." Tenured public employees possess vested property rights in their continued employment and may not be terminated without a hearing. Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532 (1984). The Second Circuit expanded Loudermill by finding that a pre-termination hearing is required because the Fourteenth Amendment protects an employee's property interest in a particular position or rank. Ciambriello v. County of Nassau, 292 F.3d 307 (2nd Cir. 2002). Although Civil Service Law § 75 states, "A person...shall not be removed or otherwise subjected to any disciplinary penalty (emphasis added)...except after a hearing upon stated charges." The Department submits that throughout the disciplinary process, P.O.

DiLeonardo was afforded the due process envisioned in Loudermill. Furthermore, the Department adhered to the stricter notice and due process mandates contained in Civil Service Law § 75.

It was also alleged/inferred by the Respondent that Art. 8, Rule 12(2) does not apply to his off duty .38 caliber Smith & Wesson. In fact, it was inferred that P.O. DiLeonardo should have been charged under a different section of the Rules and Regulations, specifically, Article 8, Rule 12 (1). "Section 75 of the Civil Service Law requires that a person suspected of misconduct be presented with 'stated charges'. Such person should be sufficiently apprised of the charges against him so as to enable him to prepare his defense." Pachucki v. Walters, 56 A.D.2d 677 (1977). In the instant matter, P.O. DiLeonardo was served with the reports of Violations of the Rules and Regulations on July 2, 2012, which outlined the facts and circumstances under which he was being accused of violating the Department Rules and Regulations (Dept. Exhibit 21). He was subsequently served with the Charges and Specifications on August 22, 2012. Both documents setting forth the nature of the allegations of the charges being made against P.O. DiLeonardo.

The argument that the charge was not the correct charge under the Department Rules and Regulations is weak at best. In Murphy v. County of Ulster, 218 A.D.2d 832 (1995), "[t]he employee instituted an action, alleging that the notice of discipline contained insufficient information to apprise him of the charges against him.... On appeal, the court held that the notice was sufficiently specific to apprise the employee of the charges against him and to allow him to prepare an adequate defense.... Moreover, the court found that the county's failure to cite specific statutes or rules did not render the notice insufficient." Furthermore, "[i]t is well settled that in the administrative forum, the charges need only be reasonably specific, in light of all the relevant circumstances, to apprise the party whose rights are being determined of the charges against him [or her] ... and to allow for preparation of an adequate defense." Id. at 832-33. (See also, Matter of Block v. Ambach, 73 N.Y.2d 323, 333 (1989) [citation omitted]; see, Matter of Langhorne v. Jackson, 213 A.D.2d 909, 909-910 (1995). Therefore, if the Departmental Hearing Officer is to believe arguendo, that P.O. DiLeonardo was charged under the wrong section of the Rules and Regulations, that being Article 8, Rule 12(1) instead of (2), it is submitted that substantial evidence to support a violation of either subsection and that Rule has been presented to the Departmental Hearing Officer.

Finally, P.O. DiLeonardo violated the Rules and Regulations, by failing to safeguard his weapon. His behavior was a gross deviation from what is expected of a member of the Nassau County Police Department on the morning of February 27, 2011. The charges against P.O. DiLeonardo were filed following a thorough and objective investigation by the IAU. Reports of Violations of Department Rules (PDCN 209) (Dept. Exhibits 17, 19A, 21) were served on P.O. DiLeonardo on July 2, 2012. On July 10, 2012, the Disciplinary Review Board (DRB) converted the PDCN 209s to the service of formal Charges and Specifications, pursuant to Article 9 of the Department Rules and Regulations. The PDCN 209s were then converted to PDCN 210s (Dept. Exhibit 22) and endorsed by the Commissioner of Police on August 22, 2012. The Commissioner of Police reviewed and endorsed the Charges and Specifications after not only the members of IAU reviewed and submitted them but also after they were reviewed by the DRB. The DRB is currently comprised of the Police Department's Division Chiefs. After a review of the facts and

the Violations of Rules and Regulations the DRB saw fit to convert the Violations of Rules and Regulations into formal Charges and Specifications. It is important to note, that the facts that led to the Charges and Specifications were reviewed at multiple levels by high ranking police department personnel up to the Commissioner of Police. By endorsing the Charges and Specifications, based on the facts that were presented to him the Commissioner of Police agreed they were properly charged. Furthermore, the Commissioner of Police has broad discretion in interpreting the Rules and Regulations as the promulgator of same, Boss v. Raymond W. Kelly, 17 A.D.3d 269 (2005).

IV. P.O. DiLeonardo was not acting in the scope of his duties, not effectuating a lawful arrest and therefore not similarly situated to other members involved in police shootings

P.O. DiLeonardo and his expert Mr. Joseph Zogbi (Respondent Supplemental exhibit 1), would have the Hearing Officer believe that his actions were justified because the Deadly Force Response Team (DFRT) report dated February 27, 2011 (Dept. Exhibit 1) concluded that his actions were within the Departmental guidelines and the Penal Law. This reliance is misplaced. D/Sgt. Distler testified that, the DFRT report is the result of a "preliminary investigation" by the DFRT (Hr'g Tr. 115). The DFRT is a team established to respond to incidents involving the use of deadly physical force, by a member of the department, in order to gather information for an administrative report to the Commissioner of Police. The report is used to brief the Commissioner of Police as close in time to the incident as possible. In the instant matter the DFRT report was generated within twenty-four (24) hours of the shooting. It is important to note, that this particular DFRT was not investigating the shooting from a criminal or even crime scene perspective. The scene was being investigated on those levels by Suffolk County authorities. D/Sgt. Distler testified that the DFRT did not have the benefit of interviewing any of the witnesses, the results of the Suffolk County Division of Medical-Legal Investigations & Forensic Sciences Crime Laboratory Shooting Incident Reconstruction Report, or photos (Hr'g Tr.115). In fact, the DFRT issued their report before even interviewing P.O. DiLeonardo. Any contact the N.C.P.D. had with P.O. DiLeonardo was peripheral at best, as it was Suffolk County Police Department's scene.

Mr. Zogbi in his "Expert Witness Report" opines, in paragraph 10, "P.O. DiLeonardo was found fit for duty, with no evidence of intoxication," by Inspector Edmund Horace and Deputy Chief John P. Hunter. This "opinion" was based on pages of the IAU report, a document which is not in this record as evidence and therefore cannot be considered by this Departmental Hearing Officer for purposes of this proceeding. Furthermore, these witnesses were both on the Respondent's witness list, the Commissioner of Police signed a subpoena for the appearance of retired Deputy Chief Hunter, at the request of the Respondent, he was never called as a witness. Deputy Chief Edmund Horace was on stand by and prepared to testify from the first day this hearing was scheduled and the Respondent never called him. Finally, the DFRT Report is in evidence, notwithstanding the fact that some of those findings were found to be flawed after further investigation.

What is telling is that after all of the additional information, statements, and evidence was available, P.O. DiLeonardo was charged with Violating the Rules and Regulations. The DRB, another group of high ranking Departmental members, determined the matter warranted the service of formal Charges and Specifications.

P.O. DiLeonardo's position that he was justified in his actions is completely belied based upon the record in this case. Many times P.O. DiLeonardo, in his own words or through the arguments of his counsel and/or expert argue that P.O. DiLeonardo was attempting to make a "lawful arrest" (Dept. Exhibit 7, Dept. Supplemental Exhibit 2, and Respondent Supplemental Exhibit 1). There is nothing in the record before the Departmental Hearing Officer explaining what Moroughan did that violated the Penal Law, or what P.O. DiLeonardo was attempting to arrest Moroughan for. In fact, at the time P.O. DiLeonardo fired his first shot, Moroughan had not done anything criminal.

Even if one was to believe that P.O. DiLeonardo was afraid of Moroughan, based on the verbal altercation, Dt/Sgt. Distler testified that P.O. DiLeonardo had other options available. To begin with, "not engage in the verbal altercations and roll up his window and call 911" (Hr'g. Tr. 250:20-21). It is submitted that P.O. DiLeonardo could have and should have made attempts to de-escalate the incident instead of escalating the incident to a shooting. P.O. DiLeonardo should not have gotten into a heated argument with Moroughan. P.O. DiLeonardo was in his girlfriend's car, and chose to get out of the car, in response to Moroughan getting out of his car, instead of calling 911 or even directing his girlfriend to call 911. P.O. DiLeonardo stated he thought Moroughan had a weapon in his left hand when Moroughan exited his taxi and walked towards P.O. DiLeonardo in his statement to IAU over one (1) year after the incident (Dept. Exhibit 7, line 25).

Interestingly, P.O. DiLeonardo did not tell Suffolk Police Department the night of the incident that he thought Moroughan had a weapon or that Moroughan threatened to kill him (S.C.P.D. Deposition of DiLeonardo Dept. Supplemental Exhibit 2). It flies in the face of reasonableness that P.O. DiLeonardo's reaction to someone coming at him with a weapon, was to approach that person (Dept. Exhibit 7, line 27) instead of again calling 911 and/or leaving the vicinity. In fact he never directs anyone to call 911 nor does he call 911 until after Moroughan leaves the scene. P.O. DiLeonardo's manner of taking control of the situation was inapposite to what a trained police officer should have done. P.O. DiLeonardo's statement indicates that Moroughan began to go back to his car at this point, and P.O. DiLeonardo unholstered his weapon while, Moroughan was retreating. P.O. DiLeonardo escalated the situation once again by going towards Moroughan with his weapon drawn and shooting, instead of getting back into his car, getting the other people back in their cars, calling 911 and making the scene safer. In fact, the independent eyewitness Eric Klug in his statement stated that P.O. DiLeonardo was shooting at the taxi as he observed the taxi moving in reverse and P.O. DiLeonardo continued to pursue the cab (Dept. Exhibit 12). Based on his own statement, the cab was about fifty (50) feet away from him when he started shooting, he had other options than to shoot at an allegedly moving vehicle with two (2) passengers, such as step out of the way, take cover behind one or both of the cars behind him or retreat to the lawn of 422 Oakwood Rd. His statement that he was concerned about defending his self and his girlfriend is self serving and his actions contradict same. He put all persons present in more danger than anyone else on the scene when he chose to get out of his car, unholster his

weapon and follow a retreating Moroughan to his cab. As explained above, at this time Moroughan had not done anything criminal. Therefore, it is submitted he was not attempting to "escape" arrest, he had not committed any crime.

Moroughan was not attempting to "escape" arrest (Respondent Supplemental Exhibit 1, para 4), he was attempting to get medical help, he was shot, Moroughan stated, "At that time, I'm -- I get the car into reverse, I step on the gas, and I back up to drive away. And then I swung myself around and drove away, and drove myself to the emergency room" (Dept. Exhibit 15, lines 6-10).

P.O. DiLeonardo failed to safeguard his weapon when he used it improperly to break the window of the taxi and pistol whipped Moroughan. This is when he lost his .38. Mr. Zogbi relied on P.O. DiLeonardo's statement to IAU, made over a year after the incident to conclude that, "Moroughan, in an attempt to flee the scene in his vehicle dragged, P.O. DiLeonardo several feet, resulting in P.O. DiLeonardo to lose the grip on his off duty revolver" (Respondent Supplemental Exhibit 1). P.O. DiLeonardo never stated he was dragged by the cab until one year later. He did not tell Suffolk Police that he was dragged or that he lost his weapon because he was dragged (Dept. Supplemental Exhibit 2). He did not tell Sgt. Marinace that he lost his weapon because he was dragged. As a matter of fact, he did not tell Sgt. Marinace that the few injuries he sustained were from being dragged by the vehicle. As a matter of fact in P.O. DiLeonardo's statement to Sgt. Timothy Marinace he stated his minor injuries were the result of the "subject hitting [him] with his car, and from me breaking the driver's side window..." (Dept. Exhibit 8). P.O. DiLeonardo's minor injuries support the argument that he was not justified in his use of deadly physical force.

Moroughan's statement that is referred to in Mr. Zogbi's report paragraph 11, has been proven to be inaccurate. That statement was not only reduced to writing at 7:00am, but after Moroughan had been in the hospital for hours being treated for a broken nose and gunshot wounds. It was also taken in the early, preliminary stages of the investigation, and while Moroughan was believed to be a suspect (Hr'g. Tr. 215-221). This statement, among many other details that were first believed to be accurate were found to be flawed after further investigation.

P.O. DiLeonardo gave a lengthy statement to IAU. It should be noted that this statement was made over one (1) year after the incident. It is suggested that P.O. DiLeonardo had time to tailor his statement to meet his needs, to present the facts in a way that were favorable to his position that he was justified in his behavior.

P.O. DiLeonardo's actions were in violation of the Department Rules and Regulations. This sets him apart from other members of the Department that have been involved in recent police shootings. In the four (4) most recent shootings that involved N.C.P.D. members, the members were on-duty and made lawful arrests. P.O. DiLeonardo was off-duty, had been drinking and was not effectuating a lawful arrest. In fact, even if one was to believe he was justified in shooting at the vehicle (which N.C.P.D. submits he was not), his use of his revolver to break the window of the vehicle was improper police tactics (Hr'g Tr.130-131). Moroughan had not committed any crime at this point. In fact he put his taxi in reverse, moving away from P.O. DiLeonardo, when P.O. DiLeonardo fired the first shot. P.O. DiLeonardo stated to IAU that he was in fear for his

life, (Dept. Exhibit 7, line 33) yet he continued to approach the car, break the window with his revolver and get into a physical altercation with Moroughan who had never produced a weapon and was bleeding from gunshot wounds. It is not until Moroughan left the scene that P.O. DiLeonardo called 911.

In instances where indemnification was required/requested relating to the aforementioned recent on-duty police involved shootings, those members who were indemnified were found to be acting in the scope of their duties as police officers. In the instant matter, P.O. DiLeonardo has not been indemnified, as the indemnification board found he was not acting in the scope of his duties.

V. Exigent Circumstances did not exist and reliance on United States v. McConney, a 9th Circuit Court of Appeals case is irrelevant.

Mr. Zogbi has opined that exigent circumstances existed that justified P.O. DiLeonardo's actions. His opinion is based on a 9th Circuit Court of Appeals case, United States v. McConney, 728 F.2d. 1195 (9th Cir. 1984). As the Departmental Hearing Officer is aware, this case was denied certiorari by the United States Supreme Court, therefore the decision is only binding on the 9th Circuit. Furthermore, in the McConney case, the federal officers involved were authorized to act pursuant to warrants, and had prior dealings with the suspect. The fear articulated in that case, was based on the fact that the officers knew the suspect had a previous felony conviction and was likely a member of the Hell's Angels gang. In the present case, P.O. DiLeonardo has encountered a taxi cab driver that he never met before, who had not committed a crime before P.O. DiLeonardo fired the first shot at him. There was no action by Moroughan, between P.O. DiLeonardo firing his weapon, and P.O. DiLeonardo breaking his window with the .38 that has been articulated that constituted a crime. P.O. DiLeonardo did not have probable cause to believe that Moroughan was attempting to escape arrest or even harm P.O. DiLeonardo. Therefore, it is not reasonable to believe P.O. DiLeonardo was trying to place him under arrest when he broke the window of the cab.

There is nothing in the record supporting the fact that P.O. DiLeonardo's weapon came into contact with Moroughan's face as a result of the breaking of the window. His intent to cause serious injury can be inferred by the severity of the injuries Moroughan sustained. Premeditation is not an element of Assault, as implied by Mr. Zogbi (Respondent Supplemental Exhibit 1, p. 2, para 3). The exigency of the circumstances was created in P.O. DiLeonardo's mind, one year later, to tailor the facts in an attempt to justify his actions.

Finally, with respect to McConney, that case involved search and arrest warrants. The federal agents were acting pursuant to these warrants.

In the instant matter, P.O. DiLeonardo did not have reasonable cause to believe that Moroughan committed any crime whatsoever. If the situation was truly one of exigency as P.O. DiLeonardo suggests, there is no possible review of the facts that supports him having enough time to

unholster his revolver from his ankle and fire off five (5) rounds once the exigent circumstances presented.

P.O. DiLeonardo's reliance on exigent circumstances is rooted in the car "accelerating in [his] direction" (Dept. Exhibit 7, line 30). However, he stated he unholstered his weapon prior to the car accelerating at him, therefore prior to the situation becoming "exigent." If he had time to unholster his weapon, he had time to simply move out of the way of the allegedly "accelerating" taxi. Notwithstanding this inappropriate reliance on McConney, exigent circumstances were not present or articulated. Moroughan had not committed any crime and was not attempting to escape arrest. P.O. DiLeonardo was not acting as a reasonable person. He had admittedly been drinking alcohol right before the encounter with Moroughan. P.O. DiLeonardo escalated the situation from the moment Moroughan pulled up next to his car.

VI. Felony convictions mandate vacating position under the N.Y.S. Public Officer's Law

Finally, P.O. DiLeonardo's actions constituted unlawful conduct. Article 5, Rule 2 (1) states, "Members of the Department will not: 1. engage in unlawful conduct, whether on or off duty." It is submitted that P.O. DiLeonardo's conduct was equivalent to actions that constituted two (2) felonies. Assault in the Second Degree and Criminal Mischief in the Second Degree.

It is also respectfully submitted that his behavior was so egregious as to constitute what could have been charged under the New York State Penal Law as felonies. When a Public Officer is convicted of a felony or a crime involving a violation of his oath of office, Section 30(1)(e) of the New York State Public Officers law mandates his office be vacated. No hearing is required. In the instant matter, P.O. DiLeonardo has been afforded a hearing and while he has not been charged with violations of the Penal Law, it is submitted his actions constituted what could have been charged under the Penal Law. Had he been charged and convicted he would vacate his position by operation of law. This is not the forum to argue why he was not charged as his conduct occurred in another jurisdiction.

CONCLUSION

P.O. DiLeonardo should not be able to allege or hide behind the claim of justification. His use of deadly physical force was not to affect a lawful arrest or prevent an escape. At the time he fired the first shot, Moroughan was not escaping and had not committed any crime. P.O. DiLeonardo claims he was in fear of his life and was firing at a vehicle that was accelerating towards him. According to the witness statements, and the crime scene reconstruction analysis, the only person other than P.O. DiLeonardo, who unequivocally said the cab was accelerating forward was Mrs. Bienz. Cornia, P.O. DiLeonardo's girlfriend stated she heard the engine revving. Interestingly, P.O. DiLeonardo never stated to LAU or Suffolk Police that he heard the engine revving. The independent witness (Eric Klug) at the window at 422 Oakwood Rd., did not see the cab moving after he heard the first shot. With the cab stopped Eric Klug saw flashes coming from the gun. Moroughan stated that he swung around and drove away. In what was clearly an attempt to make a U-turn he probably "moved forward about a foot or two at the most" when the shooting started.

It is likely, that Moroughan, who was only driving this vehicle for a week, in a moment of panic was having difficulty with shifting the gears after he went in reverse (this may explain the statements made by Mrs. Bienz and Cornia that the engine was revving). When Moroughan got the cab into drive it could have lurched forward more than a foot or two, but the evidence (and logic) shows Moroughan was trying to get away, not get closer to P.O. DiLeonardo. The crime scene report indicates the cab moved forward as little as half a car length.

Even if, one was to believe the cab moved forward, it could only have been a short distance, given the distance it was from P.O. DiLeonardo. Furthermore, based on P.O. DiLeonardo's statement, when he started shooting the cab was about fifty (50) feet away. It appears that P.O. DiLeonardo could have moved to his left and out of harms way, if he truly believed the cab was coming towards him.

By his own admission, P.O. DiLeonardo consumed alcohol that evening. P.O. Bienz statement documents P.O. DiLeonardo drinking seven (7) vodka drinks. What is perhaps most disturbing is that P.O. DiLeonardo appears to have unholstered his weapon before he started to approach the cab, and quite possibly when he was in his girlfriend's car. There is nothing to suggest, other than P.O. DiLeonardo's statement to IAU over a year later, that Moroughan may have had a weapon, that Moroughan or Ms. Mondo posed any risk beyond the use of foul language. Thus, there was no reason for P.O. DiLeonardo to have unholstered his weapon before he started to approach the cab. Given the circumstances of the shooting and the beating of an unarmed man over a minor verbal altercation, the evidence and logic dictates the P.O. DiLeonardo acted in a manner that grossly deviates from not only what the Police Department Rules and Regulations mandate, but what any reasonable person would do in a similar situation.

The N.C.P.D. submits once again that for the reasons set forth above, there was substantial evidence presented to support the Charges and Specifications before the Departmental Hearing Officer.

Dated: April 2, 2014

Nassau County Police Department

by:


Lesli P. Hiller

Attorney

Nassau County Police Department
Legal Bureau

EXHIBIT D

-----X
IN THE MATTER OF THE CLAIM OF

POLICE DEPARTMENT

COUNTY OF NASSAU, NEW YORK

Case No.: 8118

Claimant,

-against-

ANTHONY DILEONARDO

POLICE OFFICER, SERIAL NO. 9013

Respondent.

-----X

INTRODUCTION

The respondent is submitting this concluding brief but is not waiving the objections made concerning how the "hearing" was conducted. In fact, it is the respondent's position that the proceeding was tantamount to having no hearing at all. The only evidence presented was the Internal Affairs officer reading from certain documents and her unsupported and unfounded opinion. Having her testify was pointless as she added nothing to the statements she read from. Worse, the department was permitted to offer an affidavit from her after she testified concerning her qualifications and training, but the respondent was not permitted to ask the witness questions about the assertions in the affidavit.

There were no rules published concerning how the hearing was to be conducted and there were no rules enforced during the proceeding. It was literally a free-for-all where rulings were made by the presiding inspector without any rationale or reason.

There was no discernable standard by which the person presiding over the hearing accepted or rejected evidence. The presiding inspector frequently allowed in evidence over objection stating that the evidence would be given "the weight that it is due." However, the neither the Department nor the respondent had or has any idea what weight that is. The presiding inspector permitted an utterly unqualified witness to offer her "opinion" about virtually every disputed issue and about the ultimate issues of whether or not any department rule was violated. The presiding inspector arbitrarily cut off valid lines of questioning.

It was apparent that there were not any rules at all. The presiding inspector in a manner devoid of any rationale rooted in law or logic seemed to be accepting or not "evidence" based on nothing but mere whim, and, of course, that whim nearly always permitted the department to do whatever it wanted to do. The proceeding or "hearing" was a sham which denied the respondent any semblance of due process. No fact finding is possible from this record, except what is clearly a pre-determined result driven by media accounts and the interim commissioner's need to look like a disciplinarian in order impress the media and the county executive in an effort to have "interim" removed from his title. Indeed, the fact that the hearing was being conducted was leaked to Newsday by someone in the department. This was the second time the hearing was leaked to Newsday. The matter had previously been scheduled in February and someone from the department leaked that date to Newsday as well.

The entire record ought to be scrapped, another presiding inspector should be appointed and rules ought to be published to both parties prior to the start of the proceeding.

Notwithstanding the arbitrary manner in which the proceeding was conducted, the department utterly failed to establish that there was any evidence at all that the respondent violated any department rule.

FACTS

The uncontroverted proof from the witness statements establishes that on the evening of February 26, 2011, into the early morning hours of February 27, 2011, off-duty police officers Anthony D. DiLeonardo and Edward Bienz, accompanied by DiLeonardo's girlfriend Sophia Cornia, and Bienz's wife Jillian Bienz, had gone out together for dinner and then to a couple of bars in Huntington, where they each consumed a few alcoholic and non-alcoholic drinks, and went dancing (*see* 3/17/2012 P.O. DiLeonardo Statement at ¶2-11; 3/13/2012 P.O. Bienz Statement at ¶2-3). At around 1:00 a.m., they left the last bar, and DiLeonardo and Sophia, who were in Sophia's white Infinity and were unfamiliar with Huntington, followed the Bienzes' blue Acura toward Jericho Turnpike (3/17/12 P.O. DiLeonardo Statement at ¶13-14; 3/13/12 P.O. Bienz Statement at ¶4; 2/27/11 J. Bienz Statement at pg. 1; 2/27/11 S. Cornia Statement at pg. 1).

At approximately 1:15 a.m., Bienz got lost and pulled over to the side of the road on Oakwood Drive, parking his vehicle near the curb. DiLeonardo pulled up behind him, and sat in the Infinity with Sophia, waiting for Bienz to continue driving (3/17/12 P.O.

DiLeonardo Statement at ¶15-18; 3/13/12 P.O. Bienz Statement at ¶4-5; 2/27/11 J. Bienz Statement at pg. 1; 2/17/11 S. Cornia Statement at pg. 1).

As they were sitting in the car, a white Prius with a male driver and a female passenger pulled up alongside DiLeonardo's car, blocking one lane of traffic (3/17/12 P.O. DiLeonardo Statement at ¶19; 3/13/12 P.O. Bienz Statement at ¶5). The Prius was a taxi owned by Dobro Express, being driven by a new employee, Thomas Moroughan, with his girlfriend, Kristie Mondo in the passenger seat (2/27/11 Statement of K. Mondo at pg. 1; 2/27/11 Statement of T. Moroughan at pg. 1).³

Believing that the driver of the Prius was going to ask him for directions, DiLeonardo, who was at the wheel of the Infinity, rolled down his window (3/17/12 P.O. DiLeonardo Statement at ¶19-21). Moroughan, yelled out of his car's open passenger window, "You need to learn how to fucking drive, I'm going to teach you how to fucking drive right now." (3/17/12 P.O. DiLeonardo Statement at ¶22; *see also* 2/27/11 K. Mondo

³ Moroughan, a new driver at Dobro Express with less than a week on the job, had three prior arrests and two misdemeanor convictions, and was wanted in Tennessee for a federal fraud case. On the day of the incident, he was "having a bad day [as] there was a lot of traffic and [he] wasn't making any lights" (2/27/11 Statement of Moroughan at pg. 1). He got angry because he was driving behind the Bienzes' blue Acura sometime before it stopped, and was flashing his high beams at it for driving erratically (2/27/11 Statement of Mondo at pg. 1; 2/27/11 Statement of Moroughan at pg. 2). Moroughan perceived that DiLeonardo's white Infinity, which was then behind him, had flashed its beams at him, so he began to drive slowly to "piss off" the driver of the Infinity, who passed him in spite of Moroughan's attempts to prevent this (2/27/11 Statement of Mondo at pg. 1). Moroughan then got stuck at a light as the cars turned the corner, but when the light turned green, he followed them and saw them stopped at the side of the road (2/27/11 Statement of Mondo at pg. 1; 2/27/11 Statement of Moroughan at pg. 2). Neither Bienz, DiLeonardo, Jillian, or Sophia was aware that the Prius had brighted anyone, and DiLeonardo denied brighting the Prius. It thus appears that Moroughan got angry because the Acura, which was lost, was driving erratically, and he perceived that the Infinity was being belligerent when, in fact, it was just passing him to keep up with the Acura. This explains why, in contrast to Moroughan and Mondo, no one in the Acura or Infinity even recalled any earlier incident with the Prius.

Statement at pg. 2; 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo exchanged words with Moroughan, and as DiLeonardo began to close his window, Moroughan exited his car, walking around the front of the Prius toward DiLeonardo's car, while pointing at him with his right hand and yelling, "I'm going to kill you." (3/17/12 P.O. DiLeonardo Statement at ¶23-26; *see also* 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo could not see Moroughan's left hand, and, concerned that Moroughan might have a weapon, he exited his car, keeping the open door of the Infinity between himself and Moroughan (3/17/12 P.O. DiLeonardo Statement at ¶27). Moroughan continued to yell at DiLeonardo, saying, "I don't care about this fucking car. I'm going to smash your car and I'm going to kill you." (3/17/12 DiLeonardo Statement at ¶26). Moroughan then got back into his car, and floored it into reverse (*Id.*; 2/27/11 T. Moroughan Statement at pg. 2), as DiLeonardo, fearing for his and Sophia's safety, and believing that Moroughan was going to ram the Infinity in which Sophia was still sitting, drew his gun from his ankle holster and attempted to get around the back of the Infinity to get Sophia out of the car (P.O. DiLeonardo Statement at ¶28-30). As he walked towards the back of the car, he pulled out his shield, which was on a chain around his neck, and held it out in front of him with one hand, yelling to the Prius that he was a police officer and ordering the driver of the Prius to stop (2/27/11 J. Bienz Statement at pg. 1-2; 2/27/11 S. Cornia Statement at pg. 2).⁴

⁴ Jillian Bienz, who saw the Prius pull up next to DiLeonardo's car, and heard DiLeonardo and the driver of the Prius cursing and yelling at each other, "with the people in the taxi [] doing most of the yelling", also observed the Prius back up and then stop, and saw DiLeonardo holding up what she believed was his shield as he moved towards the back of his car, yelling that he was a

Before DiLeonardo could get fully around the back of his car, the Prius, which had backed up a few car lengths and had now stopped with its front facing the back of the Infinity at a diagonal angle, began accelerating toward the rear of the Infinity, where DiLeonardo was standing (DiLeonardo Statement at ¶30; 2/27/11 T. Moroughan Statement at pg. 2). DiLeonardo shouted, "Stop, police, don't move" and pointed his gun at the Prius, which was heading straight towards him. Moroughan did not stop or slow down, and DiLeonardo fired, emptying all five rounds of his weapon (P.O. DiLeonardo Statement at ¶30-34).⁵

The Prius then came to a stop between 10 and 25 feet away from DiLeonardo's car, and DiLeonardo approached the driver's side door with his shield out and his gun drawn, stating, "Police, don't move, you are under arrest." (3/17/12 P.O. DiLeonardo Statement at ¶38-39; 3/13/12 P.O. Bienz Statement at ¶9). Moroughan refused DiLeonardo's commands to unlock the door, so DiLeonardo smashed the driver's side window with the butt of his gun, unlocked the door, and pulled it open.⁶ As he attempted

police office, and ordering the driver of the Prius to stop the car (2/27/11 J. Bienz Statement at pg. 1-2). Sophia Cornia, who was sitting in the Infinity, saw the taxi back up aggressively and stop behind her car. She also saw DiLeonardo move towards the back of the car while holding out his shield, which he was wearing on a chain around his neck (2/27/11 S. Cornia Statement at pg. 2).

⁵ In a signed statement given on the day of the incident, Moroughan told police that, "I felt [DiLeonardo] fired at me to protect himself because I drove at him." (2/27/11 T. Moroughan Statement at pg. 2-3). At the hearing the Detective Sergeant Dissler hinted that the confession was taken under suspicious circumstances. However, there is not any testimony in the record that would corroborate any claim that the confession was either involuntary, false or taken in violation of the Moroughan's rights.

⁶ According to Kristie Mondo, the passenger in the Prius, during the struggle DiLeonardo "said he was a cop and that [Moroughan] was going to jail." (2/27/11 Statement of K. Mondo at pg.

to remove Moroughan from the car, the latter resisted, cursing at DiLeonardo and threatening to kill him. A struggle ensued, during which Moroughan grabbed DiLeonardo's gun with one hand and punched him with the other, as DiLeonardo was leaning into the vehicle. Moroughan then shifted the car into reverse, and sped backwards, dragging the Officer alongside the vehicle. DiLeonardo twisted away from the car, and ran away from the Prius towards Bienz, who was running to assist him, but both Officers were hit by the driver's side door of the Prius, which was still open, and were thrown to the ground (3/17/12 P.O. DiLeonardo Statement at ¶48-51; 3/13/12 P.O. Bienz Statement at 9; 2/27/11 T. Moroughan Statement at pg. 3). The Prius made a U-turn and sped away (2/27/11 J. Bienz Statement at pg. 3; 2/27/11 S. Cornia Statement at 2). DiLeonardo's gun had fallen into the Prius during the struggle.

DiLeonardo immediately called 911, identified himself as a police officer, and reported that the driver of a white Prius with gold plates had tried to run him over, that DiLeonardo had shot at the Prius, and that the driver of the Prius had taken his gun (3/17/12 P.O. DiLeonardo Statement at ¶56). EMS arrived within minutes, transporting DiLeonardo, Bienz, Sophia, and Jillian to Huntington Hospital (Id. at ¶57).

Meanwhile, Moroughan realized he had been shot and also drove to Huntington hospital, while his girlfriend-passenger, Kristie Mondo, called 911 (2/27/11 Statement of K. Mondo at pg. 3; 2/27/11 Statement of T. Moroughan at pg. 3).

2). Moroughan also recalled that DiLeonardo "said he was a police officer and that [Moroughan] was under arrest," but Moroughan claimed that he was not sure DiLeonardo was a cop, so he drove away (2/27/11 Statement of T. Moroughan at pg. 3).

The Investigation and Charges Against Moroughan

At the hospital, DiLeonardo was visited by P.O. Michael Covais, and Deputy Chief of Patrol John Hunter who spoke to him and told him that the PBA attorney was on his way. At that time, Officer DiLeonardo did not appear intoxicated, and did not smell of alcohol. His speech was not slurred and his eyes were not bloodshot (3/20/12 Covais Statement at ¶3).

On the day of the incident, the Deadly Force Response Team, consisting of Deputy Chief John P. Hunter, Deputy Chief of Patrol, Inspector Edmund Horace, Commanding Officer, ITU, Captain Daniel P. Flanagan, Commanding Officer Police Academy, and Det. Sergeant John DeMartinis, Homicide Squad, conducted an investigation and issued a preliminary report finding that "the actions of all officers involved, with regard to Use of Force issues, were within Departmental guidelines pertaining to the Use of Deadly Physical Force as well as those of Article 35 of the Penal Law of New York State" and that "[a]ll officers involved were found fit for duty" (2/27/11 Deadly Force Response Team Report at ¶3). With regard to the latter finding, both Chief Hunter and Inspector Horace reported that they spoke to Officer DiLeonardo at the hospital, and did not observe any odor of alcohol, slurred speech or glassy eyes, and that DiLeonardo exhibited no other signs of impairment (Ferguson Memo at 7).

That same day, Moroughan, who had been treated and released from the hospital, was arrested and charged with Reckless Endangerment in the Second Degree for accelerating his vehicle towards Officer DiLeonardo and placing him in fear of physical

injury or death, and Assault in the Second Degree for causing physical injury to a police officer performing a lawful duty, namely, trying to arrest him for reckless endangerment.

On June 6, 2011, in Suffolk County District Court, the charges against Moroughan were dismissed by the prosecution pursuant to C.P.L. §170.30(f) on the grounds of a jurisdictional or legal impediment. In dismissing the charges, the ADA denied that Moroughan was actually innocent of the charged crimes (6/6/11 Proceedings at 10), stressing that a legal impediment to prosecution existed in view of the conflicting evidence, the fact that the officers had consumed alcohol prior to the incident, defendant's decision not to testify in the Grand Jury, and Kristie Mondo's refusal to speak with the District Attorney's office (*Id.* at 3-6).

Also on June 6, 2011, the Internal Affairs Unit of the Nassau County Police Department was directed by Acting Commissioner of Police Thomas Krumpter to commence an Internal Affairs investigation into the February 27, 2011 incident involving Officers Bienz and DiLeonardo. That investigation resulted in departmental charges being brought. Despite the "opinion" of the sole witness at the proceeding, there was not any proof that the respondent violated any rule.

The only other evidence in the matter was the opinion of Joseph Zogbi who is a highly trained retired New York City Detective. He reviewed the same material the department's sole witness reviewed but concluded that the respondent did not violate any department rule. Like the shooting response team, Retired Detective concluded that the respondent was justified in firing his weapon because the vehicle was being driven at him at an increasingly high rate of speed. He further concluded that the attempted arrest was

justified based on the conduct of the driver and therefore the breaking of the window was necessary to affect a lawful arrest.

Lastly, the department charged the respondent with failing to safeguard his firearm under a section that clearly was not written to include a weapon not issued by the department. There is another section that mandates that an officer safeguard any firearm, but that section was not charged. Therefore the respondent cannot be found to have violated the provision which does not apply to firearms and obviously cannot be found to have violated a provision he was not charged with.

We renew our request for a hearing de novo with published rules.

Dated: April 9, 2014
Garden City, New York

BARCKET MARION EPSTIEN & KEARON, LLP

By: /s/ Bruce Barcket
Bruce A. Barcket, Esq.
666 Old Country Road, Suite 700
Garden City, New York 11530
(516) 745-1500

EXHIBIT E



POLICE DEPARTMENT
COUNTY OF NASSAU, NEW YORK
INTERNAL CORRESPONDENCE

DATE: March 30, 2014 **SNCC NO:**

TO: Commissioner of Police

FROM: Inspector Michael G. Studdert, Hearing Officer

SUBJECT: CASE NUMBER 8118- CHARGES AND SPECIFICATIONS- POLICE OFFICER ANTHONY DILEONARDO, SERIAL NUMBER 9013, SHIELD NUMBER 3632, THIRD PRECINCT

This matter involves Charges and Specifications brought against Police Officer Anthony DiLeonardo, Serial Number 9013, Shield Number 3632, Third Precinct, in Case Number 8118 for violation of the Rules and Regulations of the Nassau County Police Department ("NCPD"). Police Officer DiLeonardo is charged with three violations of the Rules and Regulations arising out of an incident that occurred at 0115 hours on February 27, 2011 on Oakwood Road and Tippen Drive, Huntington, New York.

PROCEDURAL HISTORY

1. Police Officer DiLeonardo was served with Charges and Specifications for Case Number 8118 on August 22, 2012 (See Exhibit 19). On August 28, 2012, Police Officer DiLeonardo's attorney entered a plea of "Not Guilty" by way of a notification signed by Police Officer DiLeonardo and submitted by his attorney. A hearing was scheduled for this matter on December 4, 2012 and the parties were notified of that date. The hearing was adjourned on that date at the request of the Department and rescheduled to February 10, 2014, with notification of the new date to the parties. Officer DiLeonardo's attorney requested an adjournment at that time. That request was granted and the hearing was rescheduled to March 10, 2014, with notice of the new date given to both parties.
2. The hearing did in fact commence on March 10, 2014. The hearing continued on March 11, 2014 and was then adjourned at the request of the Respondent to March 19, 2014 in order to accommodate prior commitments and court appearances required of the respondent's attorney, Mr. Barket. The Hearing was conducted at Nassau County Police Department Headquarters, 1490 Franklin Avenue, Mineola, New York. The Nassau County Police Department was represented by Leslie Hiller, Esq., of the Nassau County Police Department's Legal Bureau. The respondent, Police Officer DiLeonardo, was represented by Bruce Barket, Esq., of Barket, Marion, Epstein & Kearon, LLP. Police Officer DiLeonardo's attorney and his union (PBA) representative were present each day of the proceeding. In fact, on the last day of testimony the proceeding was delayed so that the Union representative could be present with Police Officer DiLeonardo (Tr. p. 262). Although the Charges and Specifications in this case contained thirteen (13) charges of violations of the Rules and Regulations of the NCPD, the Department only presented three of the charges (Counts 3, 4 and 11). Therefore, only those three violations were the subject of this hearing. The remaining counts were dismissed by the Department.

3. The disciplinary case against Police Officer DiLeonardo was conducted pursuant to NYS Civil Service Law §75. The administrative disciplinary case proceeded in a manner consistent with the Rules and Regulations of the NCPD. The Nassau County Administrative Code provides that a member of the Department is subject to discipline for violations of the Rules and Regulations of the NCPD. Prior to taking testimony I reminded the parties that the hearing which was about to take place was an administrative proceeding and not criminal or civil litigation. The parties were advised that hearsay evidence would be accepted and that I would be applying the substantial evidence standard. Police Officer DiLeonardo, by way of service of the Charges and Specifications, was provided with adequate notice regarding the nature of the alleged violations of the Rules and Regulations which were pending against him. Moreover, both parties had been provided adequate notice of the hearing date in order to prepare and to secure and notify any potential witnesses they wished to call. In fact, the record reflects that Mr. Barket served subpoenas on several witnesses (Tr. p. 16), but ultimately did not request that they testify. The parties were permitted to conduct cross examination of witnesses and make objections. Both parties were given ample opportunity to set forth their respective positions on the record. Although this was not a formal judicial proceeding, it did comply with the standards set forth in the NY State Administrative Act. Consequently, I reject Mr. Barket's position that the proceeding which was held was "tantamount to having no hearing at all." (Resp. Brief p. 1).
4. At the conclusion of testimony I advised the parties that I would accept additional submissions and leave the record open until March 26, 2014. Both parties declined an opportunity to make a closing statement and requested an opportunity to submit briefs. The parties were informed that closing briefs were to be submitted jointly on April 4, 2014.
5. I received submissions from the Department and the Respondent on March 26, 2014. The Department's submissions included an affidavit from Det. Sgt. Jo Ann Distler, a deposition of Officer Anthony DiLeonardo, and curriculum vitae of George G. Krivosta. Mr. Barket's submission was a report prepared by Mr. Joseph F. Zoghi. There were numerous emails between the parties regarding the submissions and additional requests and objections made by the parties. In order to maintain a clear record I requested that the parties send one joint email setting forth any outstanding issues which required a determination or ruling from me. A printout of that joint email, reflecting the parties' objections and positions on the submissions as well as my determination thereof, has been printed and added to the record.
6. On April 3, 2014, Mr. Barket requested that the deadline for submission of the briefs be extended from April 4, 2014 to April 9, 2014. His request was granted.
7. On April 9, 2014, the briefs were jointly submitted. This memorandum, setting forth my findings and recommendations is submitted following the hearing which was conducted as outlined above and after review and evaluation of the testimony, the evidence presented and the briefs submitted by the parties.
8. The Respondent argues that the Department has pre-determined the result of this hearing and that result is "driven by media accounts and the interim commissioner's need to look like a disciplinarian." (Resp. Brief p. 2). As I indicated throughout the hearing, I have remained neutral and have had no conversations with Acting Commissioner Krumpter regarding the Charges and Specifications pending against Police Officer DiLeonardo or this administrative hearing. My decision was reached after a review of the testimony, evidence, submissions and submitted briefs.

9. I have not spoken with the media about this proceeding or my role as a hearing officer. As I indicated during the hearing, I understand my obligation to evaluate the testimony and the evidence and reach my own independent conclusions (Tr. pp227-228). Moreover, there is no evidence that any member of the Department leaked any information to any media outlet regarding this hearing.

WITNESSES CALLED AND EVIDENCE PRESENTED

10. Despite the fact that there is some contradiction and inconsistencies in the statements that were offered into evidence, it is not impossible to conclude what actually occurred on the date of the incident after reviewing all of the testimony and the evidence. I have considered the possible motivations for the varying statements and have endeavored in my duty as the hearing officer to weigh the testimony and evidence and to make determinations about the credibility of the witnesses and the accuracy of their statements.
11. The Department called Det. Sgt. JoAnne Distler, currently assigned to the Internal Affairs Unit, as its only witness. The Department presented evidence detailing Det. Sgt. Distler's training and experience by way of testimony and an affidavit. Det. Sgt. Distler testified regarding the Internal Affairs investigation relating to the three charges which are the subject of this hearing. After receiving evidence with regard to her training and experience and having had the opportunity to observe her demeanor during testimony, I find Det. Sgt. Distler's testimony to be reliable and credible. I find that Det. Sgt. Distler is qualified to testify regarding the Rules and Regulations of the NCPD and investigations into violations thereof. I further find that Det. Sgt. Distler is qualified to testify regarding the facts of the investigation into the alleged violations of the Rules and Regulations by Office DiLeonardo which were the subject of this hearing.
12. The Respondent did not present any witnesses at the hearing. The Respondent did request to bring in an unnamed witness on the final day of testimony but did not have a witness present. The Respondent, aware of the nature of the allegations against him since the service of the Charges and Specifications and having had adequate notice of the hearing date had not made arrangements to have the witness present. Further, the hearing began on March 10, 2014 and continued through March 19, 2014 during which time the Respondent could have produced a witness but did not. Rather, the Respondent's attorney indicated on the last day of testimony that he "began to look at the calling of and expert" (Tr. p. 270) and went on to state that whether or not he did in fact retain or call this witness would depend not on the importance of the proposed testimony, but rather on the cost of one witness versus another one. (Tr. p. 271). Additionally, the Respondent indicated that he was requesting an adjournment to possibly call a witness to testify regarding police shootings. As this hearing was a proceeding to determine whether or not the Respondent violated the Rules and Regulations of the NCPD, I did not believe that a witness called to testify with regard to tactical operations, and not violations of the Rules and Regulations of the NCPD, would be relevant.
13. The Respondent did submit the affidavit of Joseph Zogbi, a retired New York City Police Department member, in support of his position. However, it must be noted that after a review of Mr. Zogbi's resume, I find that he would be unable to testify with regard to the Rules and Regulations of the NCPD or violations thereof. Additionally, it is important to note that Mr. Zogbi relies on and cites to sections of the IAU report which are not in evidence. Both Mr. Zogbi's report and the Respondent's brief rely on facts contained in the Deadly Force Response Team report. The Deadly Force Response Team report is a preliminary report that was prepared shortly after the incident and without the benefit of a complete and thorough investigation.

FACTS:

14. After listening to and reviewing the testimony in this case and evaluating the evidence presented I make the following findings of facts:
15. On February 27, 2011, at 0115 hours, while off duty in Huntington Station, N.Y., Officer DiLeonardo, accompanied by his girlfriend Sophia Cornia, was driving a 2011 white Infiniti. Officer Bienz, accompanied by his wife Jillian Bienz, was operating a 2008 blue Acura. They were on their way home from a night out in Huntington. Officer DiLeonardo was following Officer Bienz. Officer Bienz made a wrong turn and they got lost in Huntington Station. Officer Bienz pulled over to the side of the road on Oakwood Rd. in the vicinity of Tippen Drive, Huntington Station, N.Y. Officer DiLeonardo pulled over behind Officer Bienz's vehicle. Just prior to pulling over, there was some type of a road rage incident between Officer DiLeonardo and a white Toyota Prius taxi cab being driven by Thomas Moroughan ("Moroughan"). Moroughan's girlfriend, Kristie Mondo, was a passenger in that taxi. It is my finding that Police Officer DiLeonardo's continued escalation of this road rage incident, as outlined below, led to the charges which are the subject of this hearing.
16. Within a minute of the officers pulling over, the taxi cab being operated by Moroughan, pulled along side the Infiniti being driven by PO DiLeonardo. Moroughan and Officer DiLeonardo then engaged in a verbal confrontation.
17. There are conflicting statements as to whether Officer DiLeonardo had exited his vehicle prior to the cab pulling up. However, at some point both Moroughan and Officer DiLeonardo exited their vehicles and continued the argument over the hood of the white taxi cab. As the argument escalated, everyone at the scene, including Police Officer Bienz exited their vehicles with exception of Kristie Mondo who remained inside the taxi.
18. Moroughan reentered his vehicle and backed it up 30 to 45 feet. The verbal argument between Moroughan and Officer DiLeonardo continued as Moroughan backed up his vehicle. Officer DiLeonardo, who remained outside of his vehicle, chose to escalate the situation by removing his off duty weapon from his ankle holster. Officer DiLeonardo walked towards the taxi which was in the travel lane of Oakwood Road. As Officer DiLeonardo walked towards the cab he fired five shots at the windshield of the taxi. The windshield of the taxi was struck with bullets three times. Two shots struck Moroughan, one in the chest and one in the arm. Moroughan was unarmed and there is nothing in the record to indicate that Moroughan had engaged in criminal activity or had a prior criminal history. Following the shooting, the cab moved forward a short distance and came to a stop 20 to 25 feet from Officer DiLeonardo. Officer DiLeonardo did not seek cover or attempt to order the driver out of the taxi. Rather, Officer DiLeonardo escalated this situation even further. Officer DiLeonardo ran up to the driver's side of the taxi, which was not moving and smashed the driver's side window with his weapon in his right hand, causing it to shatter. Officer DiLeonardo smashed Moroughan in the nose with the butt of his gun, and punched him in the face numerous times, fracturing his left nasal bone.
19. Officer DiLeonardo opened the driver's door to the cab and attempted to pull Moroughan out. During the struggle with Moroughan, Police Officer DiLeonardo lost his gun in the cab. That weapon was eventually recovered on the left rear passenger floor area of the taxi by the Suffolk County Police Department. Moroughan, while Officer DiLeonardo was attempting to pull him out of the taxi, put the taxi in reverse and backed up, knocking Police Officer DiLeonardo to the ground and bumping Police Officer Bienz causing him to hit the ground. Moroughan drove himself to the hospital.

FINDINGS

20. The following is my analysis and finding with regard to each of the three charges before me:

Charge 3: Violation of Article 5, Rule 2, Subdivision 1: On February 27, 2011, at about 0115 hours, at Oakwood Road and Tippen Drive, Huntington, New York, Police Officer DiLeonardo, while off duty, did engage in unlawful conduct, in that Police Officer DiLeonardo without justification struck Thomas Moroughan in the face with his .38 caliber Smith & Wesson revolver. The blow broke Mr. Moroughan's nose, caused him substantial pain and required medical treatment at a hospital. At the time of the incident Mr. Moroughan was sitting in the driver's seat of a stopped Toyota Prius, New York Registration Number # 13100TY. Pursuant to New York State Penal Law § 120.05(2), Police Officer DiLeonardo's actions constitute the crime of Assault in the Second Degree, which is a Class D felony. This is in violation of Article 5, Rule 2, Subdivision 1.

The findings of facts as outlined above detail the actions of Police Officer DiLeonardo which support the finding of this violation of the Rules and Regulations of the NCPD. Additionally, it should be noted that in his statement, Officer DiLeonardo admits striking Thomas Moroughan in the nose with the butt of his gun. (See Exhibit 7). Moroughan, in his statement to the Suffolk County Police Department, stated that Officer DiLeonardo "came up to my driver's window and smashed his gun busting my window and hitting me in the face." (See Exhibit 10). As a result of Officer DiLeonardo punching him in the face numerous times and smashing him in the nose with the butt of his gun, Moroughan sustained a broken nasal bone (See Exhibit 18). The actions of Officer DiLeonardo were unlawful, a violation of the Rules and Regulations of the NCPD and his actions could have been charged as a violation of NYS Penal Law.

Charge 4. Violation of Article 5, Rule 2, Subdivision 1: On February 27, 2011, at about 0115 hours, at Oakwood Road and Tippen Drive, Huntington, New York, Police Officer DiLeonardo, while off duty, did engage in unlawful conduct, in that Police Officer DiLeonardo intentionally caused damage in excess of one thousand five hundred dollars (\$1500.00) to a 2010 Toyota Prius, New York State Registration Number # 13100TY, being operated by Thomas Moroughan. Police Officer DiLeonardo fired his .38 caliber Smith & Wesson revolver five (5) times at the taxi being driven by Moroughan. Three of the shots entered the passenger compartment. Once the taxi stopped moving Police Officer DiLeonardo then broke the driver's side window with his revolver. Pursuant to New York State Penal Law § 145.10, Police Officer DiLeonardo's actions constitute the crime of Criminal Mischief in the Second Degree which is a Class D felony. This is in violation of Article 5, Rule 2, Subdivision 1.

The findings of facts as set forth above detail the actions of Police Officer DiLeonardo which support the finding of this violation of the Rules and Regulations of the NCPD. Additionally, in his statement, Officer DiLeonardo admits he fired his weapon at the driver (See Exhibit 7, ¶33). He also states "that my shots damaged the windshield." (See Exhibit 7, ¶ 39) Mr. Eric Klug, in his statement to Sgt. Distler states, "I saw a man with a gun walking towards a white car which was stopped in the middle of the road. The man with the gun was shooting his gun at the windshield of the car." (See Exhibit 12.) In his statement to Sgt. Distler, Officer Bienz stated he "saw Anthony DiLeonardo run up to the driver's side of the cab and begin smashing the driver's window with his weapon in his right hand causing it to shatter." (See Exhibit 13, ¶ 9). The damage to the cab, operated by Moroughan, included three bullet holes to the windshield and a shattered driver's side window (See Exhibits 2,3,6). Sgt. Distler testified that she interviewed the owner of the cab, Mr. Boris Goldstein and that he stated it was a couple of thousand dollars to repair the vehicle. (Tr. pp116-117.). The actions taken by Officer DiLeonardo were

unlawful, a violation of the Rules and Regulations of the NCPD and his actions could have been charged as a violation of NYS Penal Law.

Charge 11. Violation of Article 8, Rule 12, and Subdivision 2: On February 27, 2011, at about 0115 hours, at Oakwood Road and Tippen Drive, Huntington, New York, Police Officer DiLeonardo did not properly safeguard his uniforms and equipment and any other Department property issued for or assigned for his use in that Police Officer DiLeonardo after using his .38 caliber Smith & Wesson revolver in physical confrontation with Thomas Moroughan the driver of a 2010 Toyota Prius, dropped said revolver inside Mr. Moroughan's vehicle. This weapon remained in the taxi while Moroughan drove himself to the hospital and was later recovered by Suffolk County PD from the rear passenger floor of the taxi. This is in violation of Article 8, Rule 12, and Subdivision 2.

The finding of facts as set forth above detail the actions of Police Officer DiLeonardo which support the finding of the violation of this Rule and Regulation of the NCPD. Additionally, in his statement to Sgt. Distler, Officer Bienz states "I ran towards the cab with the intention of helping Anthony secure his weapon." (See Exhibit 13 ¶ 9). Officer Bienz also states that while standing on the sidewalk at some point Officer DiLeonardo told him "that he lost his gun in the cab." (See Exhibit 13 ¶ 10). Officer Bienz states he was treated at Huntington Hospital, and then was placed in a room by himself at the hospital. Officer Bienz states that Police Officer DiLeonardo came to his room and spoke to him briefly. Officer Bienz states that at this time Officer DiLeonardo told him again "that he lost his gun in the cab." (See Exhibit 13 ¶ 12). Officer DiLeonardo's .38 caliber Smith & Wesson revolver was later recovered by the Suffolk County Police Department on the left rear passenger floor area of the cab. (See Exhibits 6, 20) The actions of Officer DiLeonardo were a violation of the Rules and Regulations of the NCPD.

21. Based on the findings of facts outlined above, I find there is substantial evidence in the record to support the following findings:

Charge 3. I find Police Officer Anthony DiLeonardo violated Article 5, Rule 2, Subdivision 1 of the Rules and Regulations of the Nassau County Police Department.

Charge 4. I find Police Officer Anthony DiLeonardo violated Article 5, Rule 2, Subdivision 1 of the Rules and Regulations of the Nassau County Police Department.

Charge 11. I find Police Officer Anthony DiLeonardo violated Article 8, Rule 12, Subdivision 2 of the Rules and Regulations of the Nassau County Police Department.

RECOMMENDATION

As a police officer, Officer DiLeonardo must command the absolute confidence and respect of the public he serves. Police Officer Anthony DiLeonardo's actions, on February 27, 2011 at 0115 hours, reflect unfavorably upon his moral character and fitness for public service; he has brought discredit to the Nassau County Police Department. His own actions have made it impossible for him to carry out his duties as a Nassau County Police Officer.

There is substantial evidence that Officer DiLeonardo violated the Rules and Regulations of the Nassau County Police Department and his Oath of Office. In light of the egregious nature of these violations the only appropriate punishment in this case is termination.



Michael G. Studdert
Inspector

APPROVED


Office of Commissioner of Police